

**109<sup>TH</sup> CONGRESS, 2<sup>ND</sup> SESSION**

**U.S. HOUSE OF REPRESENTATIVES**

**COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT**

**INVESTIGATION OF ALLEGATIONS RELATED TO IMPROPER CONDUCT  
INVOLVING MEMBERS AND CURRENT OR FORMER HOUSE PAGES**

**DECEMBER 8, 2006**

Mr. HASTINGS from the Investigative Subcommittee submitted the following

**REPORT**

To the Committee on Standards of Official Conduct.

## **INVESTIGATIVE SUBCOMMITTEE**

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Judy Biggert, Illinois

Howard L. Berman, California,  
Ranking Minority Member  
Stephanie Tubbs Jones, Ohio

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Ed Cassidy, Chief of Staff to the Chairman  
Bari Schwartz, Special Counsel to the Ranking Minority Member  
Kenneth E. Kellner, Counsel to the Investigative Subcommittee  
C. Morgan Kim, Counsel to the Investigative Subcommittee  
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## **I. EXECUTIVE SUMMARY**

On Friday, September 29, 2006, Representative Mark Foley resigned from the U.S. House of Representatives. After his resignation, H. Res. 1065 was introduced as a privileged resolution on the floor of the House by Minority Leader Nancy Pelosi. H. Res. 1065 directed the Committee on Standards of Official Conduct to appoint a subcommittee to determine facts connected with “Representative Foley’s conduct and the response thereto” and directed the Chairman and Ranking Minority Member of the Committee to make a preliminary report within ten days.<sup>1</sup>

H. Res. 1065 was not adopted by the House. Rather, by unanimous vote of the House, it was referred to the Committee on Standards of Official Conduct (the “Committee”). In accordance with House and Committee rules, and because the privileged resolution was not adopted by the House, the Committee retained discretion to determine whether to take action on this matter. In order to make that determination, all the Members of the Committee returned to Washington, D.C. during the October recess period to deliberate at a meeting held on Thursday, October 5, 2006 on the appropriate course of action.

During the October 5, 2006 meeting, the Committee determined that the matter warranted immediate Committee review and, by unanimous vote on that date, the Committee voted to establish an Investigative Subcommittee. The Committee’s action was taken in accordance with clause 3 of House Rule XI and Committee Rules 1(c), 14(a)(3), and 18(a), which authorize the Committee to establish an investigative subcommittee on its own initiative. The Investigative Subcommittee was established with jurisdiction to conduct a full and complete inquiry and investigation into any conduct of House Members, officers, and staff related to information concerning improper conduct involving Members and current and former House Pages, and was

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<sup>1</sup> Exhibit 1.

directed to report to the full Committee at the conclusion of its inquiry with the Investigative Subcommittee's findings, conclusions, and recommendations.

The findings, conclusions, and recommendations of the Investigative Subcommittee are contained in this Report. During the course of its inquiry, the Investigative Subcommittee examined the conduct of former Representative Foley, as well as the conduct of current and former officials and employees of the House. The Investigative Subcommittee did not attempt to make formal findings regarding the conduct of former officials and employees because, as non-affiliates of the House, the Investigative Subcommittee lacked disciplinary authority over them. The Investigative Subcommittee comments upon their conduct, however, as set forth in this Report.

Regarding the conduct of current Members, officers, and employees of the House, the Investigative Subcommittee considered whether such individuals violated the House Code of Official Conduct or other rules and standards applicable to them. In its review of this matter, the Investigative Subcommittee was disturbed by the conduct of some of those who dealt with allegations regarding the conduct of former Representative Foley. When confronted with such allegations, the response of some individuals was limited to that necessary to shift notice and responsibility to those they believed more responsible for dealing with such matters. Other individuals took more direct action, but declined to probe deeply into the nature and scope of the allegations regarding Representative Foley or declined to follow-up to see if their efforts to intervene had any positive result. Others tried repeatedly to elevate the matter, but encountered obstacles in the chain of command that limited the effectiveness of their efforts. In all, a pattern of conduct was exhibited among many individuals to remain willfully ignorant of the potential consequences of former Representative Foley's conduct with respect to House pages.

Notwithstanding the concerns regarding the specific conduct of some individuals who learned of certain allegations regarding Representative Foley, based on the specific facts presented, the Investigative Subcommittee did not find that any current House Members or employees violated the House Code of Official Conduct. The requirement

that Members and staff act at all times in a manner that reflects creditably on the House does not mean that every error in judgment or failure to exercise greater oversight or diligence establishes a violation of House Rule 23. The Investigative Subcommittee therefore recommends no further investigative or disciplinary proceedings against any specific person.

Nonetheless, this Report should serve as a strong reminder to Members, officers, and employees of the House that they are obligated to pursue specific and non-specific allegations of improper interaction between a Member or House employee and a participant in the House Page Program – even if the allegations are not readily verifiable or involve the sensitive subject of a Member’s personal relationship with a young person. The same standard applies regardless of whether the Member and page are of the same or opposite sex. The failure to exhaust all reasonable efforts to call attention to potential misconduct involving a Member and House page is not merely the exercise of poor judgment; it is a present danger to House pages and to the integrity of the institution of the House.

The evidence obtained by the Investigative Subcommittee in this matter included, but was not limited to, the sworn testimony of eight Members of the House, and interviews and sworn testimony of 43 other witnesses. During the inquiry, approximately 3,500 pages of transcribed sworn testimony and witness statements resulted from proceedings before the Investigative Subcommittee or interviews with Investigative Subcommittee counsel. In addition, the Investigative Subcommittee obtained hundreds of pages of documents supplied by witnesses.

In addition to the foregoing, a description of the Investigative Subcommittee’s investigative efforts, and an explanation of all the Investigative Subcommittee’s findings are also contained in this Report. The Report also contains certain recommendations regarding the operation of the House of Representatives Page Program.

## **II. CONDUCT OF THE INQUIRY**

### **A. Establishment of the Investigative Subcommittee**

The introduction of H. Res. 1065 and the empanelment of the Investigative Subcommittee in this matter followed the publication in the news media of several allegations related to Representative Foley's conduct, as described below:

That Representative Foley sent e-mails to a high school student who had formerly served as a House page sponsored by Representative Rodney Alexander, and that such e-mails contained content that may not have been appropriate;

That in addition to the e-mails sent to the former House page referenced above, Representative Foley sent instant messages over the Internet to one or more former House pages that contained sexually explicit and salacious language;

That prior to the publication of the aforementioned e-mails or instant messages, one or more Members of the staff of Speaker J. Dennis Hastert had received information concerning Representative Foley's e-mail communications with the former House page sponsored by Representative Rodney Alexander;

That prior to the publication of the aforementioned e-mails or instant messages, Representative John Shimkus, the Chairman of the House Page Board, and Jeff Trandahl, then the Clerk of the House and the supervising official of the House Page Program, had learned of the e-mails sent to the former page sponsored by Representative Rodney Alexander and had taken certain actions in response to that information; and

That Majority Leader John A. Boehner and Representative Thomas M. Reynolds had learned of information related to the e-mails sent by Representative Foley to the



former House page sponsored by Representative Rodney Alexander and had, independently of each other, brought this matter to the attention of Speaker Hastert.

The publication in the news media of information related to the e-mails and instant messages sent by Representative Foley occurred during the week of September 25, 2006, and preceded his resignation from the House on September 29, 2006.

During a meeting of the Committee held in executive session<sup>2</sup> on October 5, 2006, the Committee determined to establish an Investigative Subcommittee to inquire into this matter.<sup>3</sup> The Investigative Subcommittee was established pursuant to a resolution adopted by the Committee during the meeting and in accordance with the House and Committee rules referenced in the resolution. In subsequent Investigative Subcommittee and Committee proceedings, the Investigative Subcommittee's inquiry was referred to as the "Investigation of Certain Allegations Related to Improper Conduct Involving Members and Current or Former House Pages."

The resolution adopted by the Committee provided as follows:

Whereas certain allegations have arisen related to communications and interactions between former Representative Mark Foley and current or former participants in the U.S. House of Representatives Page Program; and

Whereas certain additional allegations have arisen regarding the conduct of certain Members and employees of the House related to communications and interactions between former Representative Mark Foley and current or former participants in the U.S. House of Representatives Page Program; and

Whereas the conduct of a Member, officer, or employee of the House, in connection with the aforementioned allegations, may have violated the Code of Official Conduct or one or more law, rule, regulation, or other

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<sup>2</sup> See Rule XI, Rules of the House of Representatives for the 109<sup>th</sup> Congress.

<sup>3</sup> In a press statement issued on October 3, 2006, the Chairman and Ranking Minority Member announced that the full Committee would meet in executive session on October 5, 2006.

standard of conduct applicable to the conduct of a Member, officer, or employee of the House in the performance of his or her duties or the discharge of his or her responsibilities; and

Whereas the Committee has authority to investigate such conduct pursuant to House Rule XI, clauses 3(a)(2) and (3)(b)(2), and pursuant to Committee Rules 14(a)(3) and 18; and

Whereas the Committee has determined pursuant to Committee Rule 1(c) that the interests of justice require the adoption of special procedures in order for the Committee to carry out its investigative and enforcement responsibilities with respect to the aforementioned allegations;

It is hereby resolved by the Committee:

1. That an Investigative Subcommittee be established with jurisdiction to conduct a full and complete inquiry and investigation into any conduct of House Members, officers and staff related to information concerning improper conduct involving Members and current and former House Pages;
2. That the scope of the inquiry may extend to any matters related to the jurisdiction of the Investigative Subcommittee as set forth in this resolution;
3. That the Investigative Subcommittee is authorized to advise the public at large that it is interested in receiving information and testimony from any person with first-hand information regarding the matters within the jurisdiction of the Investigative Subcommittee;
4. That at the conclusion of its inquiry, the Investigative Subcommittee shall report to the Committee its findings, conclusions, and recommendations;
5. That the Members of the Investigative Subcommittee shall be designated pursuant to Committee Rule 19(a);
6. That Committee Rules 7 (Confidentiality), 8(a) (Subcommittees – General Policy and Structure), 9 (Quorums and Member Disqualification), and 10 (Vote

Requirements) are fully applicable to this inquiry by the Investigative Subcommittee;

7. That the Investigative Subcommittee is authorized to obtain evidence and relevant information by the means and in the manner set forth in Committee Rules 19(b) – (c), except as those rules apply to respondents;
8. That witnesses before the Investigative Subcommittee shall be furnished with a copy of the special procedures for this inquiry (as set forth in this resolution), as well as accorded the rights set forth in Committee Rules 26(k) – (o);
9. That the Committee intends that all witnesses who provide testimony before the Investigative Subcommittee should be sequestered and should not communicate with any other witnesses regarding any aspect of their testimony unless the Investigative Subcommittee permits otherwise;
10. That except as otherwise provided in this Resolution, the Rules of the Committee shall be applicable in this matter and will be interpreted by the Investigative Subcommittee and the Committee in a manner not inconsistent with this Resolution.

In a public statement issued on October 5, 2006, the Chairman and Ranking Minority Member of the Committee announced that the Chairman of the full Committee, Representative Doc Hastings, would serve as Chairman of the Investigative Subcommittee, and that the Ranking Minority Member of the full Committee, Representative Howard L. Berman, would serve as the Ranking Minority Member of the Investigative Subcommittee. It was further announced in the statement that the next most senior members of the full Committee, Representative Judy Biggert and Representative Stephanie Tubbs Jones, would also serve as Members of the Investigative Subcommittee.

In a separate statement also made on October 5, 2006 regarding the inquiry, the Chairman Hastings and Ranking Minority Member Berman announced that:

[S]hortly following the meeting of the full Ethics Committee, our new investigative subcommittee met for

the first time and unanimously approved nearly four dozen subpoenas for documents and testimony. Many of the individuals we plan to talk with are Members, officers, and staff of the House. For that reason, we sincerely hope most of the subpoenas we authorized today will prove unnecessary, because we believe that most of those individuals share our desire to get quick and truthful answers to the questions being asked by so many Americans.

## **B. Investigative Process**

The Investigative Subcommittee was established on October 5, 2006 and determined to commence work immediately and at a rapid pace. As noted, the Investigative Subcommittee authorized the issuance of numerous subpoenas even before the Committee's public announcement of its empanelment. The Investigative Subcommittee's investigative work continued until December 4, 2006, the last date that the Subcommittee met to receive sworn testimony from a witness. Each of the four Members of the Investigative Subcommittee returned multiple times to Washington, D.C. during the October and November recess periods for the purpose of conducting the Subcommittee's work. In addition, Members of the Investigative Subcommittee received updates from staff and deliberated informally with each other in person and by telephone throughout this inquiry. The Investigative Subcommittee acknowledges the commitment and effort of staff in assisting the Subcommittee, including William O'Reilly, Ed Cassidy, Bari Schwartz, Ken Kellner, Morgan Kim, Pete Van Hartesveldt, Stan Simpson, and Carol Dixon.

The accelerated pace of this inquiry was necessitated for several reasons. First, in empanelling the Investigative Subcommittee, the Committee recognized the seriousness of a matter involving highly improper communications between a Member of Congress and a high school student who had served as a congressional page. Second, the Committee and Investigative Subcommittee recognized the need to obtain information and testimony from as many witnesses as possible as quickly as possible, in order that the testimony and recollections of those witnesses would not be impacted either by the

extraordinary media coverage of this matter, or by communications and interactions amongst themselves regarding the events under review.

In this regard, the Committee and Investigative Subcommittee took measures to discourage communications between witnesses before the Investigative Subcommittee regarding their testimony. These measures were taken for the purpose of maintaining the confidentiality and reliability of information provided by and asked of witnesses during this inquiry, and to discourage attempts to deliberately or inadvertently orchestrate or coordinate testimony before the Investigative Subcommittee. The Committee addressed these concerns directly in the resolution it adopted on October 5, 2006. One of the special procedures included in the resolution in accordance with Committee Rule 1(c) provides that, unless the Investigative Subcommittee permitted otherwise, witnesses who provided testimony to the Investigative Subcommittee should be sequestered from other witnesses.

Each witness before the Investigative Subcommittee was provided with a copy of the Committee's resolution containing the sequestration provision. In addition, correspondence to witnesses specifically referenced the sequestration provision and informed witnesses that the Investigative Subcommittee would "inquire on the record" regarding witnesses' compliance with the instruction that communications with the Investigative Subcommittee be kept confidential. In addition, nearly every proceeding before the Investigative Subcommittee and its counsel included an "on the record" inquiry regarding communications a witness may have had related to his or her contact with the Investigative Subcommittee, and every proceeding concluded with an admonishment that the witness should continue to comply with the resolution's sequestration provision. Based on Committee precedent, it was the position of the Investigative Subcommittee that Members and employees of the House were obligated to comply with the sequestration rule and not discuss any aspect of their testimony with anyone other than their counsel, and that failure to comply with this request could form

the basis of disciplinary proceedings in the House in accordance with House and Committee rules.<sup>4</sup>

The Investigative Subcommittee encountered representation of more than one witness by the same attorney.<sup>5</sup> Speaker J. Dennis Hastert and his Deputy Chief of Staff, Mike Stokke, were both represented during their depositions by attorney J. Randolph Evans of the law firm of McKenna, Long and Aldridge. Mr. Evans also served as counsel to Speaker Hastert for the purposes of the preparation an “Internal Review of Contacts with the Office of the Speaker Regarding the Congressman Mark Foley Matter,” that will be discussed in more detail in the factual narrative of this Report. Tim Kennedy, Special Assistant in the Speaker’s Office, was represented by Stefan Passantino, also of the law firm of McKenna, Long and Aldridge. Mr. Passantino also attended the deposition of Mike Stokke, as co-counsel to Mr. Evans. Finally, both Representative Rodney Alexander and his Chief of Staff, Royal Alexander, were represented during their separate depositions by Craig Smith and Richard John. The Investigative Subcommittee does not conclude that any attorney had disclosed the specific testimony of a witness to any other witness that the same attorney represented.

As noted, the Investigative Subcommittee began its work on October 5, 2006. One of the first steps taken by the Investigative Subcommittee, in addition to the authorization of subpoenas for documents and testimony, was to issue a “Dear Colleague” letter for the “immediate and personal attention” of all House Members. The letter, signed by the Chairman and Ranking Minority Member of the Investigative Subcommittee, was distributed to all House offices on October 6, 2006, and contained the following text:

As you may know, an Investigative Subcommittee of the Committee on Standards of Official Conduct (the “Committee”) has been empanelled to conduct an inquiry

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<sup>4</sup> See *Investigation of Certain Allegations Related to Voting on the Medicare Prescription Drug, Improvement, and Modernization Act of 2003*, H. Rep. 108-722, 108<sup>th</sup> Cong., 2d Sess. (Oct. 4, 2004) at 13-14.

<sup>5</sup> Some Subcommittee Members believe that House Rules should be amended to prohibit such multiple representation.

regarding any conduct of House Members, officers and staff related to information concerning improper conduct involving Members and current and former House Pages. We are contacting you now in our capacities as Chairman and Ranking Minority Member of that Investigative Subcommittee.

The purpose of this letter is to notify all Members that it is the expectation of the Investigative Subcommittee that any Members with information related to the matter under investigation will bring such information to the attention of the Investigative Subcommittee. Such information should include, but not be limited to, any information related in any way to communications or interactions between former Representative Mark Foley and any current or former participants in the House Page Program. In this regard, you should inquire of staff under your supervision as to relevant information in their possession.

In order to assist the Investigative Subcommittee with its inquiry, we also request that you contact current and former House Pages sponsored by your office for the purpose of learning whether any of those individuals had any inappropriate communications or interactions with former Representative Foley or any other Member of the House. You should advise all Pages contacted that any information gained pursuant to your inquiry will be shared with the Investigative Subcommittee, and will be maintained by the Investigative Subcommittee in a confidential manner consistent with House and Committee rules.

We appreciate your cooperation in this matter. If you have any questions, or if you have information to provide to the Investigative Subcommittee, please contact Committee Chief Counsel William V. O'Reilly at (202) 225-7103.

The Investigative Subcommittee acknowledges here its receipt from many House offices of information obtained from efforts to contact current and former House pages. Additional information was obtained by the Investigative Subcommittee from a designated toll-free telephone number established within the Office of the Clerk of the House for the purpose of reporting information concerning House Pages or the House

Page Program. Some, but not all, of the information received from these sources developed into leads or formal investigative actions.

The most critical evidence obtained by the Investigative Subcommittee was the approximately 3,500 pages of transcribed sworn testimony and witness statements procured during proceedings before the Investigative Subcommittee or during interviews with Investigative Subcommittee counsel. In addition, hundreds of pages of documents were collectively supplied to the Investigative Subcommittee by witnesses. The Investigative Subcommittee also obtained and reviewed publicly-available records, including published press releases and news articles.

In total during its inquiry, the Investigative Subcommittee formally deposed eight Members of the House, including Speaker J. Dennis Hastert, Majority Leader John A. Boehner, Representative Rodney Alexander, Representative Thomas M. Reynolds, and Representative Jim Kolbe, as well as the three House Members that serve on the House Page Board, Representative Shelley Moore Capito, Representative John Shimkus, and Representative Dale Kildee. Nine current House employees were also deposed by the Investigative Subcommittee, as well as nine individuals not affiliated with the House (including some former House employees and former Clerk of the House Jeff Trandahl). The House Sergeant at Arms, Wilson Livingood, who is also a member of the House Page Board, was also deposed by the Investigative Subcommittee. Each of the witnesses who were deposed by the Investigative Subcommittee was placed under oath.<sup>6</sup> At least two Members of the Investigative Subcommittee were present at all times for all sworn depositions as required by Committee rules. In addition, as authorized by the Investigative Subcommittee, counsel for the Investigative Subcommittee interviewed approximately 30 other individuals, including current House Clerk Karen L. Haas, supervising and non-supervising employees of the House Page Program, and several other current House employees. The majority of the interviews were transcribed by a stenographer with the consent of the individual being interviewed. In addition, the Investigative Subcommittee received information informally from several witnesses,

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<sup>6</sup> See Committee Rule 19(b)(6).



including information supplied by their counsel. The Committee considered statements of witnesses not placed under oath to be subject to the “false statements” criminal statute, 18 U.S.C. § 1001, as amended in 1996. That statute, among other things, prohibits knowingly and willfully making any materially false statement or concealing a material fact in “any investigation or review, conducted pursuant to the authority of any committee . . . of the Congress, consistent with applicable rules of the House or Senate.”

The Investigative Subcommittee notes the cooperation of Members of the House during the Investigative Subcommittee’s inquiry. No Member of the House that was asked to provide voluntary testimony declined to do so, although Representative Kolbe limited the scope of his testimony as described in Section V of this Report.

The Investigative Subcommittee did not obtain testimony from former Representative Mark Foley. After Representative Foley resigned from Congress, he left Washington and returned to Florida. He then entered a rehabilitation facility in Tucson, Arizona, reportedly for treatment of alcoholism. After thirty days, Representative Foley announced that he intended to remain in the rehabilitation facility for an additional thirty days. At the same time, several state and local law enforcement agencies announced that they were beginning preliminary investigations into whether Rep. Foley had engaged in criminal activity with former pages or other young men. On November 16, 2006, the Florida Department of Law Enforcement announced that it had opened a criminal investigation after its preliminary inquiry. On November 16, 2006, the Investigative Subcommittee issued subpoenas for documents and testimony to Representative Foley.<sup>7</sup> Representative Foley’s counsel responded on November 21, 2006, asking that the Subcommittee defer the subpoenas in light of the pending criminal investigations. Representative Foley’s counsel also stated that if Representative Foley were made to appear for testimony he would invoke the Fifth Amendment and refuse to testify.<sup>8</sup> The Investigative Subcommittee determined that both deferring questioning of Representative Foley until resolution of any criminal proceedings and instituting enforcement

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<sup>7</sup> A copy of the document subpoena is at Exhibit 2. A copy of the subpoena for testimony is at Exhibit 3.

<sup>8</sup> Exhibit 4.

proceedings to compel compliance with the subpoenas would unnecessarily delay the issuance of this report. The Subcommittee has therefore chosen to issue this report without the benefit of Representative Foley's testimony.

Finally, the Investigative Subcommittee notes the receipt of a communication from the Department of Justice advising it that the Federal Bureau of Investigation is conducting a "preliminary investigation" of the activities of former Representative Mark Foley, and requesting that the Investigative Subcommittee conduct its inquiry in a manner that would not interfere with federal law enforcement interests. Among the requests made by the Department of Justice was that that entity be permitted to complete its interviews of any current or former House Pages with relevant information before such interviews are conducted by the Investigative Subcommittee or its counsel.

### III. BACKGROUND INFORMATION

#### A. The Page Program

The House of Representatives has been employing pages from the earliest Congresses. The first three known “pages” served during the 20<sup>th</sup> Congress (1827-29). Today, there are approximately 70 pages in each academic year class.<sup>9</sup>

The duties of a House page consist primarily of delivering correspondence, legislative materials, and small packages within the Capitol complex. Pages are also assigned to answer phones in the Members’ Cloakrooms, take messages for Members, and prepare the House floor for sessions. Pages are paid employees of the House and presently earn a gross salary of \$1,568.08 per month. Depending on the party affiliation of their sponsoring Member, pages are currently supervised either by majority chief page supervisor Peggy Sampson or minority chief page supervisor, Wren Ivester.<sup>10</sup>

##### *1. Eligibility and Selection Process*

Pages generally serve either during the fall or spring semester, or during one of two summer terms. All academic year applicants must be high school juniors who will be at least sixteen years old on the date they begin their term. In addition, academic year applicants must attend Page School, which requires at least a 3.0 grade point average for acceptance. Applicants for the summer program, which has no grade point average requirement, may include rising high school juniors or rising seniors. Page School is not offered during the summer terms.

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<sup>9</sup> Initially, Members sponsored young boys for the positions, many of whom were destitute or orphaned. By 1842, the number of pages was capped at eight, each of whom earned \$2 per day. In the period after the Civil War, the number of pages serving each Congress expanded to several dozen.

<sup>10</sup> Sampson has held her position for just over 20 years. Interview Transcript of Peggy Sampson (hereinafter Sampson Int. Tr.) at 4. Ivester was hired in September 1995. Wren Ivester Interview Transcript (hereinafter Ivester Int. Tr.) at 2.

Applicants must be sponsored by a Member of Congress. Because of the limited number of page positions, not all Members can sponsor a page at the same time. Application requirements vary according to Member and political party, but they may include a written essay, resume of extracurricular activities, and letters of recommendation. Once sponsored, selection to participate in the page program is made at the discretion of the Speaker of the House or the Minority Leader.

## *2. Organization of the Page Program*

The Page Program consists of three components, informally referred to as “the triangle” by those within the program. These components represent the three aspects of page life – living in the House Page Residence Hall, attending classes at the House Page School, and working on the House floor and throughout the Capitol complex.<sup>11</sup>

The Clerk of the House has the responsibility for administering the page program. Karen Haas is the current Clerk and has held this position since her appointment by Speaker Dennis Hastert on November 18, 2005.<sup>12</sup> Although Haas is ultimately responsible for the page program, much of the day-to-day activity and operation of the program is delegated to the administrators of the triangle components. These individuals include the principal of the Page School, the director of the Page Residence Hall, and the majority and minority chief page supervisors, each of whom is required to submit a weekly status report to Haas and to attend a regular Tuesday morning “chiefs” meeting.<sup>13</sup>

Reporting directly to the Clerk and assisting with her page program responsibilities is the page program coordinator, currently Ellen McNamara.<sup>14</sup> McNamara acts as a liaison between the Clerk and the page program administrators. Her duties also include processing

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<sup>11</sup> Grace Crews Interview Transcript (hereinafter Crews Int. Tr.) at 7-8; John Leekley Interview Transcript (hereinafter Leekley Int. Tr.) at 6; Sampson Int. Tr. at 13; Interview Summary of Ellen McNamara (hereinafter McNamara Int. Sum.).

<sup>12</sup> Karen Haas Interview Transcript (hereinafter Haas Int. Tr.) at 12, 14. Prior to being promoted to the position of Clerk of the House, Haas had worked since June of 1999 as a floor assistant under Speaker Hastert.

<sup>13</sup> Haas Int. Tr. at 32.

<sup>14</sup> Haas Int. Tr. at 31; McNamara Int. Sum.

and maintaining page applications, communicating with parents, assisting with the updating and distribution of the page handbook.<sup>15</sup> McNamara has served as the page program coordinator since January 2006, succeeding Grace Crews, who had held the position for approximately eight years.<sup>16</sup>

### *3. The House Page Residence Hall*

Pages have been living at the Residence Hall's present site located three blocks from the Capitol at 501 First Street, SE, since it opened in the fall of 2001. Previously, pages were housed in the Old Congressional Hotel. John Leekley is the current director of the Page Residence Hall. He was promoted to the position in August of 2004 after having spent one year as the Hall's assistant director and two years as a proctor.<sup>17</sup> Reporting directly to Leekley are the assistant director, a tutor, an office coordinator, and four proctors.<sup>18</sup> Leekley and each of his staff live at the Residence Hall.<sup>19</sup>

The Page Residence Hall is governed by strict rules. The first floor of the Residence Hall is designated for male residents and the second floor for females. The U.S. Capitol Police provide security for the building. Officers conduct foot patrols and man a lobby desk 24 hours per day. Both residents and visitors must present identification and sign in when entering the building. In addition, pages are required to sign out each time they leave the building and disclose their destination. They must also have an escort or "buddy," which may be another page, a parent, or parentally-approved adult over the age of 21, at all times when outside the Residence Hall.

Curfew at the Residence Hall is 10:00 p.m. from Sunday through Thursday and midnight on Friday and Saturday. A "bed check" is performed every night by the proctors. Permission to be away from the Residence Hall overnight may be granted by the director upon written and verbal consent of the parents. A computer lab that pages can utilize to do

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<sup>15</sup> McNamara Int. Sum.

<sup>16</sup> Crews Int. Tr. at 3.

<sup>17</sup> Leekley Int. Tr. at 3-4.

<sup>18</sup> Leekley Int. Tr. at 5.

<sup>19</sup> Leekley Int. Tr. at 15.

their homework is located on the second floor of the Residence Hall. Like all House employees, pages are assigned a user ID and password. Pages do not, however, have a House e-mail account, but they are permitted to use e-mail through other Internet service providers.<sup>20</sup>

#### *4. The House Page School*

Pages were first required to attend school following the passage of the 1925 Compulsory School Attendance Act. The first Page School consisted of a single room and was located in the Capitol basement. In 1949, the Page School was moved into the Jefferson Building of the Library of Congress, where it remains today.

The Page School is fully accredited by the Middle States Association of Colleges and Schools. Students are entitled to have the grades and credits earned at the Page School transferred to their home high schools. Because most pages pursue higher education, the School provides an honors college preparatory curriculum.

#### *5. The Page Board*

Oversight of the Page Program is vested with the Page Board. Created by statute in 1982 following the Speaker's Commission on Pages, the Page Board was established to "ensure that the Page Program is conducted in a manner that is consistent with the efficient functioning of the House and welfare of the pages."<sup>21</sup> Following the adoption of the statute by the 97<sup>th</sup> Congress, the first members of the Page Board were appointed. The Board consists of two Members from the Majority party selected by the Speaker, one Member

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<sup>20</sup> Leekley Int. Tr. at 13.

<sup>21</sup> 2 U.S.C. § 88b-2.

House of Representatives Page Board; establishment and purpose.

Until otherwise provided by law, there is hereby established a board to be known as the House of Representatives Page Board to ensure that the page program is conducted in a manner that is consistent with the efficient functioning of the House and the welfare of the pages.

from the Minority party selected by the Minority Leader, the Clerk of the House and the House Sergeant at Arms.<sup>22</sup>

Presently, the Page Board is comprised of Republican Members Shelly Moore Capito and John Shimkus, who also serves as Chairman, Democratic Member Dale Kildee, Clerk of the House Karen Haas, and Sergeant at Arms Bill Livingood. In addition, former Clerk of the House Donald Anderson was appointed Member Emeritus of the Page Board following his retirement from the House in 1995.<sup>23</sup>

The Page Board does not have regularly scheduled meetings. Rather, it meets on an as-needed basis to deal with any emergencies, page-related issues, or staffing issues that may arise.<sup>24</sup> Decisions made by the Page Board are generally reached through consensus rather than by a formal vote of the members.<sup>25</sup> As discussed more fully below, a Page Board meeting was held on the evening of September 29, 2006, following the resignation of Rep. Foley. Aside from this meeting, the only other Page Board meeting that occurred in 2006 was held on March 14.<sup>26</sup> There was only one Page Board meeting in 2005 and two in 2004.

Outside the context of Page Board meetings, communication among and between its members is done informally; there are no formal rules or procedures.<sup>27</sup> There is also a measure of deference accorded to the chairman and his decision-making concerning many recurring or routine issues. In situations involving the expulsion of a page, for example, the chairman works closely with the Clerk of the House in reaching such a decision. His subsequent consultation with the remaining Page Board members before implementing the decision is more of a formality or “courtesy” to the members rather than an attempt to seek their input on the matter.<sup>28</sup>

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<sup>22</sup> 2 U.S.C. § 88b-3.

<sup>23</sup> Page Handbook, Fall 2006-Spring 2007.

<sup>24</sup> Representative Dale Kildee Deposition (hereinafter Kildee Dep.) at 12-13.

<sup>25</sup> Kildee Dep. at 5.

<sup>26</sup> McNamara Int. Sum.

<sup>27</sup> Kildee Dep. at 13-14.

<sup>28</sup> Kildee Dep. at 13; Representative John Shimkus Deposition (hereinafter Shimkus Dep.) at 5.

## 6. Harassment Policy

The Page Handbook sets forth a policy on harassment. This policy prohibits not only sexual harassment, but also harassment on the basis of race, color, religion, or national origin. Under the policy, any page who believes that he or she has been subjected to or has witnessed actions that violate the harassment policy are advised to promptly report the violation to his or her “direct supervisor, the next level supervisor, or any other management official with whom the employee feels comfortable discussing such issues.”<sup>29</sup> The harassment policy is discussed and explained to the pages at their initial orientation session. In addition, all pages are required to attend mandatory sexual harassment training conducted by the Office of House Employment Counsel.<sup>30</sup>

### B. The Office of The Speaker

The Speaker’s most prominent role is that of presiding officer of the House,<sup>31</sup> and in this capacity he is empowered by House rules to administer proceedings on the House floor, including the power to recognize Members on the floor to speak or make motions and the power to appoint Members to conference committees.<sup>32</sup> The Speaker also oversees much of the non-legislative business of the House, such as exercising general control over the Hall of the House and the House side of the Capitol.<sup>33</sup>

J. Dennis Hastert became House Speaker on January 6, 1999. Scott Palmer has been chief of staff to Speaker Hastert for the entire time Hastert has served as Speaker.<sup>34</sup> According to Speaker Hastert, Palmer’s “job is the day-to-day operation of the House.”<sup>35</sup> In his capacity as chief of staff to the Speaker, Palmer “deals with other staff -- Chiefs of Staff, Senate staff -- on issues that are before the House, usually policy issues.”<sup>36</sup> According to Speaker Hastert, Palmer’s “realm is more in the policy [ ] issues, but he also would deal

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<sup>29</sup> Page Handbook, Fall 2006-Spring 2007 at I-26 to I-27.

<sup>30</sup> Leekley Int. Tr. at 22.

<sup>31</sup> See generally House Rule I.

<sup>32</sup> See House Rule I, clauses 1, 2.

<sup>33</sup> See generally House Rule I.

<sup>34</sup> Scott Palmer Deposition (hereinafter Palmer Dep.) at 5.

<sup>35</sup> Speaker J. Dennis Hastert Deposition (hereinafter Hastert Dep.) at 17.

<sup>36</sup> Hastert Dep. at 17.



with personnel issues as well. He ostensibly is over all staff, our district staff, our staff back in Illinois. So he has a broad responsibility.”<sup>37</sup>

The deputy chief of staff in the Office of the Speaker is Mike Stokke, and he has held that position for approximately eight years.<sup>38</sup> According to Speaker Hastert, Stokke “really is kind of a Member management type of situation. People come in and have a complaint, they see Mike.”<sup>39</sup> In addition, Stokke handles any “political issues” a Member might have.<sup>40</sup> “If it’s political policy, he’s out of my office and does that over in the [National Republican Congressional Committee]. But that’s also part of Member maintenance, you know. So if somebody has something that they want politically, they go see Mike.”<sup>41</sup> In general, Stokke is responsible for, among other things, helping Members with issues on which they wish to have the Speaker’s assistance.<sup>42</sup> In addition to his salary for working in the Speaker’s office, Stokke receives compensation for work performed for political committees controlled by Speaker Hastert.<sup>43</sup>

Speaker Hastert testified that matters involving a Member’s conduct would be addressed by Palmer, but “if Scott was overburdened with something, Stokke might pick up the loose ends. But, you know, if it was something that was important, really needed my attention, it would bubble to me eventually. I mean, that is basically the process.”<sup>44</sup> Stokke testified that he would report directly to the Speaker on most things, but he would report to Palmer on matters that were within Palmer’s area of responsibilities.<sup>45</sup> “We speak because we’re in the same office. But I don’t raise things to his attention, generally speaking,

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<sup>37</sup> Hastert Dep. at 17.

<sup>38</sup> Mike Stokke Deposition (hereinafter Stokke Dep.) at 9.

<sup>39</sup> Hastert Dep. at 17.

<sup>40</sup> Hastert Dep. at 17.

<sup>41</sup> Hastert Dep. at 18; *see also* Palmer Dep. at 11-12 (“Mike concentrates on sort of the Member services aspect of things, and he also oversees the press operation and he deals with all things political.”).

<sup>42</sup> Stokke described his duties as “Member service types of issues. So it could be anything from people seeking to be on a committee, to people who wish to forward some sort of legislation, to people who have legislation whose legislation isn’t moving in a committee, to any number of things that Members would find of interest and wish to seek out the Speaker’s assistance on.” Stokke Dep. at 7-8.

<sup>43</sup> Stokke Dep. at 8-9.

<sup>44</sup> Hastert Dep. at 18-19.

<sup>45</sup> Stokke Dep. at 10.

because what I'm doing is often different than what he's doing.”<sup>46</sup>

Ted Van Der Meid is counsel to the Speaker's office and director of floor operations.<sup>47</sup> According to Speaker Hastert, Van Der Meid was “the first red flag guy on anything.”<sup>48</sup> Van Der Meid “deals with all the constitutional offices of the Congress, plus things like the Architect's Office and all of the other entities that exist around here. So he is kind of the overseer, the liaison with those groups. \* \* \* [H]e would be the first person I would go ask a question of what is proper to do or what is not proper to do.”<sup>49</sup> Among other matters, Van Der Meid handles financial disclosure issues and trip requests, and he is liaison to the House Bipartisan Legal Advisory Group.<sup>50</sup> Van Der Meid reports to Scott Palmer, but he can bring matters up directly with the Speaker.<sup>51</sup> Within the Speaker's Office, because of his role as liaison to the Office of the Clerk, Van Der Meid is assigned matters having to do with the House page program.<sup>52</sup> Stokke and Van Der Meid share an office, together with their shared assistant Tim Kennedy.<sup>53</sup>

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<sup>46</sup> Stokke Dep. at 11.

<sup>47</sup> Ted Van Der Meid Deposition (hereinafter Van Der Meid Dep.) at 8, 185.

<sup>48</sup> Hastert Dep. at 21.

<sup>49</sup> Hastert Dep. at 21.

<sup>50</sup> Van Der Meid Dep. at 9.

<sup>51</sup> Van Der Meid Dep. at 14, 18.

<sup>52</sup> Hastert Dep. at 60; Van Der Meid Dep. at 24; Palmer Dep. at 12; Tim Kennedy Deposition (hereinafter Kennedy Dep.) at 13; Jeff Trandahl Deposition (hereinafter Trandahl Dep.) at 90.

<sup>53</sup> Stokke Dep. at 18.

## IV. NARRATIVE SUMMARY OF EVIDENCE

### A. Rep. Mark Foley

#### 1. Rep. Foley's Interaction with Pages Generally

Rep. Mark Foley was first sworn in as a Member of the House of Representatives in January 1995 at the beginning of the 104<sup>th</sup> Congress. From the beginning of his tenure, Rep. Foley reportedly showed “a fairly common friendliness” to Members and staff alike.<sup>54</sup> Various persons also began to observe Rep. Foley's particular interest in young male staff, interns, and House pages. Rep. Foley's chief of staff, Kirk Fordham, was told by another Member's office soon after Foley took office that Rep. Foley had been placing phone calls to a young male intern in that Member's office.<sup>55</sup> In another example, a young male custodian complained to cloakroom staff that Rep. Foley had become “too friendly” towards him.<sup>56</sup>

Jeff Trandahl began employment in the Clerk's office in 1995 as an assistant clerk, later moving to the position of deputy clerk.<sup>57</sup> During this period, even though he was not yet Clerk of the House (a position he was elected to in January 1999), Trandahl exercised a significant management role over the page program.<sup>58</sup> In this capacity, Trandahl became concerned that Rep. Foley was spending too much time with pages, and that his relationship with the pages was too familiar.<sup>59</sup> He termed Rep. Foley a “nuisance,” which he described as:

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<sup>54</sup> Kirk Fordham Deposition (hereinafter Fordham Dep.) at 5. “Generally, throughout the 10 years that I worked with Mr. Foley, there was a fairly common friendliness that he exhibited towards all staff. Those of you that have met him probably know he was overly friendly with everyone. He talks to Members, he talks to staff, he talks to interns, pages.”

<sup>55</sup> Fordham Dep. at 6-7.

<sup>56</sup> Interview Summary of Tim Harroun.

<sup>57</sup> Trandahl Dep. at 7.

<sup>58</sup> Gerasimos Vans Interview Transcript (hereinafter Vans Int. Tr.) at 6-8.

<sup>59</sup> Trandahl Dep. at 12, 14.

[P]eople who got too involved in the program. They didn't keep a professional distance, they didn't maintain -- they went to a personal level with relationships, instead of holding professional level. And I would have different experiences through my career; but, for example, I would have people [Members] come to complain to me because a page complained to them about a math test. And it's so out of what I would view the reasonable and normal that Members would have that level of interaction or interest. And I would have those experiences with him. And I would ask him, you know, to maintain that professional distance and not to get overinvolved in the personal aspects of the kids interacting with each other.<sup>60</sup>

Trandahl's concerns in this regard continued following his election as Clerk of the House in 1999. In addition to his own observations, he also began to receive complaints from page program staff. For example, Peggy Sampson, the majority chief page supervisor, had similarly become concerned with Rep. Foley spending too much time with pages on the House floor and generally interfering with the performance of their duties.<sup>61</sup> Sampson observed Rep. Foley to be particularly interested in male pages and testified that Rep. Foley's interactions gave her a "creepy feeling."<sup>62</sup> Sampson tried to stay in the vicinity when Rep. Foley was near the pages, but she did not see Rep. Foley inappropriately touch any page or hear him say anything inappropriate.<sup>63</sup>

## *2. Rep. Foley's Reported Page Dorm Visits*

Rep. Foley also reportedly appeared at the page residence hall after curfew on at least two occasions. A number of witnesses testified that they had been told about an incident where Rep. Foley appeared at the page dorm, possibly intoxicated, and was turned away by Capitol Police. Trandahl recalled that he had heard about this incident from residence hall staff sometime before 2000, possibly before he became Clerk.<sup>64</sup> Ted Van Der Meid, the Speaker's counsel and director of floor operations, testified that he had heard

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<sup>60</sup> Trandahl Dep. at 13.

<sup>61</sup> Sampson Int. Tr. at 39, 41-42.

<sup>62</sup> Sampson Int. Tr. at 31.

<sup>63</sup> Sampson Int. Tr. at 41-42.

<sup>64</sup> Trandahl Dep. at 15-16.

about this incident from Trandahl “many years ago.” He recalls that Trandahl told him that he had gotten a call from the Capitol Police indicating that Rep. Foley was outside the page dorm publicly intoxicated and that Trandahl may have told him that he had to take Foley home.<sup>65</sup> Sampson similarly testified that Trandahl had told her about the incident sometime prior to when the new page dorm opened in September 2001.<sup>66</sup> Kirk Fordham also recalled hearing about this incident from Trandahl, but he believes that it occurred in 2002 or 2003.<sup>67</sup> The Investigative Subcommittee heard no testimony from any person who actually witnessed this event, nor did the Investigative Subcommittee obtain any other direct evidence reflecting any such appearance by Rep. Foley at the page dorm.<sup>68</sup>

An apparently separate incident occurred in June 2000 during the pages’ customary end-of-semester “all night party,” during which the pages are permitted to stay up past curfew on the residence hall grounds under the supervision of residence hall staff. At about 10 or 11 p.m., a man in a convertible appeared in front of the residence hall, and before the supervising staff member was able to react, two or more pages had gotten into the car with the man and driven away. The staff member learned from other pages that the man was Rep. Foley, and she then contacted the residence hall director for guidance. Upon learning that the man was Rep. Foley, the director was reportedly unconcerned, and the pages reportedly returned shortly thereafter.<sup>69</sup>

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<sup>65</sup> Van Der Meid Dep. at 94-100.

<sup>66</sup> Sampson Int. Tr. at 44-46.

<sup>67</sup> Fordham Dep. at 19-20.

<sup>68</sup> Wilson Livingood, the House Sergeant at Arms since 1995, who is a member of the House Page Board and also a member of the board of the Capitol Police, testified that he had no knowledge of any incident involving Representative Foley appearing outside the page dorm. Wilson Livingood Deposition (hereinafter Livingood Dep.) at 14. Livingood also testified that he asked the Chief of the Capitol Police to search their files for any record of such an incident. Livingood received a letter signed by acting chief of police, Christopher M. McGaffin, dated October 16, 2006, stating, “After a comprehensive search of Department reports and record files, no written police report has been discovered that addresses any police matter involving former Congressman Foley.” Exhibit 5.

<sup>69</sup> Janelle Pulis Interview Transcript at 7-9.

### *3. Former Page Sponsored By Rep. Kolbe*

During the fall of 2001, a former page who had been sponsored by Rep. Jim Kolbe contacted Rep. Kolbe to report that he had received an instant message (“IM”) from Rep. Foley that had made him uncomfortable.

Rep. Foley’s contact with the former page began while he was still a page during the 1999-2000 academic year.<sup>70</sup> On the last day of the program, Rep. Foley gave the former page his e-mail address and also told him that the address was also Foley’s “Instant Messenger sign-in.”<sup>71</sup> The former page kept in contact with Rep. Foley from the time he left the page program, and he testified that he does not recall any inappropriate communications from Rep. Foley until the fall of 2001.<sup>72</sup> Among other things, the former page requested that Rep. Foley provide a letter of recommendation for college, which Rep. Foley did.<sup>73</sup>

In approximately October 2001, while he was a freshman in college, the former Kolbe page told Rep. Foley in an IM conversation that his girlfriend was coming to visit him. While the former page cannot recall the precise wording of the IM he received in response, he recalls that Rep. Foley made reference to the size of his penis.<sup>74</sup> According to the former Kolbe page, after consulting with his parents, he forwarded Foley’s IM as an attachment to an e-mail directly to Rep. Kolbe through Rep. Kolbe’s personal e-mail account. In his e-mail to Rep. Kolbe, the former Kolbe page explained that Rep. Foley had said something inappropriate to him and asked Rep. Kolbe to “take care of it.” The former Kolbe page did not request any particular resolution, believing that such a request would be “presumptuous.”<sup>75</sup>

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<sup>70</sup> Deposition of the Former Kolbe Page (hereinafter Former Kolbe Page Dep.) at 5, 8-10.

<sup>71</sup> Former Kolbe Page Dep. at 8.

<sup>72</sup> Former Kolbe Page Dep. at 18.

<sup>73</sup> Former Kolbe Page Dep. at 10, 11.

<sup>74</sup> Former Kolbe Page Dep. at 18, 19.

<sup>75</sup> Former Kolbe Page Dep. at 25.

About a week later, the former Kolbe page received another e-mail from Rep. Foley apologizing for making him feel uncomfortable. The former Kolbe page believes that Rep. Foley's apology may have resulted from his communication to Rep. Kolbe.<sup>76</sup> The former Kolbe page accepted the apology and considered the matter closed.<sup>77</sup> The former Kolbe page continued to communicate with Rep. Foley after the incident, and he told the Subcommittee that Rep. Foley did not say or do anything inappropriate again.<sup>78</sup> Later in the fall of 2001, Rep. Foley and the former Kolbe page had dinner together when they were both in the same city. The former Kolbe page stated, "I went to dinner with him, Dutch, down the middle, perfectly acceptable conversation . . . . I considered it a networking issue. I was really happy to do it. I didn't think it was anything inappropriate at that time. I know he was being appropriate at that time."<sup>79</sup>

Rep. Kolbe recalls having been contacted by his former page about Rep. Foley, but denies having seen the actual IM. Rep. Kolbe provided the following account:

Either [the former page] called me or he called Patrick Baugh, my assistant, and said that he had had – and it may have been an e-mail or a phone call – and said that he had had an e-mail from Congressman Foley, and I cannot tell you the word he used, but the essence of it was that it made him feel uncomfortable.

My best recollection is that it was Patrick Baugh that came to me and said, we've had this contact from [the former page], and he's asked us to contact Mr. Foley's office – Mr. Foley – to ask Mr. Foley to cease communications with him. I did not see any communication that [the former page] had received, and as far as I know Mr. Baugh had not either seen that.

When he came to me and I went to Patrick or Patrick got it and came to me, the next step we both agreed upon immediately was to contact Mr. Foley's Chief of Staff, Kirk

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<sup>76</sup> Former Kolbe Page Dep. at 30. "And I figured at that point that either Mr. Kolbe had spoken with him because it was overtly -- you know, it was overtly apologetic and to a point where he must have gotten a scolding since he was speaking like that, not a simple apology."

<sup>77</sup> Former Kolbe Page Dep. at 31.

<sup>78</sup> Former Kolbe Page Dep. at 46.

<sup>79</sup> Former Kolbe Page Dep. at 45-46.

Fordham, who I had known before Mr. Foley came to Congress because he was a staff person for another Member of Congress, and suggest to him that he tell his Member to cease communications. Within a matter of 2 or 3 minutes, Patrick Baugh came back into my office and said, "Message delivered." And I also called the Clerk's Office to tell them what we had done,<sup>80</sup> and I said, "Fine." That was the end of it. I do not believe I even called [the former page] back to tell him the message had been delivered, but there was no – apparently no – as far as I was concerned, the issue was closed. [The former page] never contacted me again on that matter.<sup>81</sup>

Baugh says that the former Kolbe page contacted Rep. Kolbe directly, not him, and that he discussed the matter with Rep. Kolbe and Kolbe's chief of staff, Fran McNaught after the page had contacted Rep. Kolbe. He says that Rep. Kolbe directed him to "talk to Kirk Fordham and to ask him to basically ask Mr. Foley or tell Mr. Foley to stop whatever communication he was having with" the former page.<sup>82</sup> Baugh testified that Kolbe did not show him an e-mail or IM, or tell him anything other than that the former page was made "uncomfortable" because of "inappropriate e-mails that [the former page] had received from Congressman Foley."<sup>83</sup> Similarly, McNaught testified that Rep. Kolbe had mentioned to her that "a page felt uncomfortable . . . because of some action by Mr. Foley,"<sup>84</sup> but that she did not remember Rep. Kolbe giving any description of why the page felt uncomfortable.<sup>85</sup>

Baugh testified that he complied with Rep. Kolbe's request and contacted Fordham by telephone and told him that the former page was made uncomfortable by messages from Mr. Foley and that the former page "wishes Mr. Foley would go away, would stop whatever actions he's doing . . . ."<sup>86</sup> Baugh testified that Fordham "said he

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<sup>80</sup> Kolbe later explained that it was Baugh who contacted the Clerk's office. Representative Jim Kolbe Deposition (hereinafter Kolbe Dep.) at 71-72.

<sup>81</sup> Kolbe Dep. at 16-17.

<sup>82</sup> Patrick Baugh Deposition (hereinafter Baugh Dep.) at 16.

<sup>83</sup> Baugh Dep. at 12.

<sup>84</sup> Frances McNaught Deposition (hereinafter McNaught Dep.) at 8.

<sup>85</sup> McNaught Dep. at 12.

<sup>86</sup> Baugh Dep. at 18.



would take care of the problem, and that was the last that I heard of it.”<sup>87</sup> Baugh said that he “reported back to either Congressman Kolbe or Ms. McNaught, or perhaps both, that I had spoken to Mr. Fordham and that he’d agreed to take care of the matter.”<sup>88</sup>

Baugh testified that he also contacted Trandahl regarding Rep. Foley’s communication to the former Kolbe page at the request of either Rep. Kolbe or McNaught. He testified that he advised Trandahl as follows:

You know, [the former page], came to Congressman Kolbe; you know, contacted Congressman Kolbe; was uncomfortable with an e-mail he’d received. We -- you know, I talked to Kirk Fordham; told him to ask Mr. Foley or tell Mr. Foley to stop whatever contact he had with [the former page]. Mr. Fordham said he would take care of the issue. You know, we think that’s case closed.<sup>89</sup>

He did not request any action or follow-up from Trandahl, and Baugh does not recall Trandahl’s reaction or whether Trandahl expressed any surprise or awareness of Rep. Foley’s behavior.<sup>90</sup> Kolbe testified that Baugh did not report to him any details of the conversation he had with Trandahl.<sup>91</sup>

Rep. Kolbe testified that he “did not attempt to speculate about what it was” that made the former page uncomfortable.<sup>92</sup> “I acted on the information that we received from [the former page], and he asked us as a constituent now, not as a page, to contact Mr. Foley and ask him directly to stop communicating with him, and that is what we did.”<sup>93</sup> Although, according to Rep. Kolbe’s testimony, he never asked his former page what had made him uncomfortable, Rep. Kolbe said that it had occurred to him that “it may have been some kind of a communication that was sexual in nature.”<sup>94</sup> Rep. Kolbe did not follow up with

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<sup>87</sup> Baugh Dep. at 18.

<sup>88</sup> Baugh Dep. at 5.

<sup>89</sup> Baugh Dep. at 23.

<sup>90</sup> Baugh Dep. at 23-24.

<sup>91</sup> Kolbe Dep. at 72.

<sup>92</sup> Kolbe Dep. at 24.

<sup>93</sup> Kolbe Dep. at 24.

<sup>94</sup> Kolbe Dep. at 25.

his former page or Rep. Foley after Baugh had addressed the matter with Fordham.<sup>95</sup> Rep. Kolbe testified that he thought the way he addressed the issue was “sufficient and the correct way to handle it.”<sup>96</sup>

According to the former Kolbe page, on September 29, 2006, after Rep. Foley resigned from the House, he called Rep. Kolbe’s cell phone to get advice on what he should do if asked about the 2001 IM by the Committee on Standards or other authority.<sup>97</sup> The former page left a message and believes Rep. Kolbe called him back the next day.<sup>98</sup> According to the former page, Rep. Kolbe responded that “I haven’t thought about that in years,” and told the former page that “it is best that you don’t even bring this up with anybody . . . [T]here is no good that can come from it if you actually talk about this. The man has resigned anyway.”<sup>99</sup> Rep. Kolbe confirmed that he had spoken to his former page after Rep. Foley’s resignation, but says that the page had already decided that he was not going to report the IM, and that he merely responded, “That’s your decision.”<sup>100</sup>

Some days after that call, the former Kolbe page recalls receiving a phone message from Rep. Kolbe in which he said, “It looks like you did some talking.” Rep. Kolbe continued on to say that there was going to be a story about him in the *Washington Post* and asked what the former Kolbe page had said.<sup>101</sup> According to the former Kolbe page, Rep. Kolbe’s message also said that he wanted to make sure that the page was represented by counsel in case the matter “blew up,” and advised him to call Rep. Kolbe on his home phone if he needed anything.<sup>102</sup> The former Kolbe page testified that he returned Rep. Kolbe’s call and told him that he was not the source for the story and

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<sup>95</sup> Kolbe Dep. at 34.

<sup>96</sup> Kolbe Dep. at 31.

<sup>97</sup> Former Kolbe Page Dep. at 35-37.

<sup>98</sup> Former Kolbe Page Dep. at 35. Rep. Kolbe recalls talking to the former page on September 29, 2006, but the former page believes the conversation took place on September 30, 2006. Kolbe Dep. at 91-92; Former Kolbe Page Dep. at 38.

<sup>99</sup> Former Kolbe Page Dep. at 35.

<sup>100</sup> Kolbe Dep. at 36, 45.

<sup>101</sup> Former Kolbe Page Dep. at 40. See Jonathon Weisman, “Lawmaker Saw Foley Messages in 2000,” *Washington Post*, October 9, 2006.

<sup>102</sup> Former Kolbe Page Dep. at 40.

referred Rep. Kolbe to his attorney.<sup>103</sup> Rep. Kolbe acknowledged that he left a message for the former page to see what he knew about “the whole story that was appearing in the paper,” and that he was “then informed that since [the former page] had informed the Clerk’s Office, he had an attorney. So I made no further attempt to contact [the page].”<sup>104</sup> Rep. Kolbe testified that Baugh had previously spoken with the former page and told him to report what he knew about Rep. Foley to the Clerk’s office.<sup>105</sup>

On October 10, 2006, Rep. Kolbe issued a statement that included the following:

I have been contacted by news organizations about former Rep. Foley’s e-mail contacts with former pages. This is my best recollection of the single incident I was made aware of.

Some time after the Page program, an individual I had appointed as a Page contacted my office to say he had received e-mails from Rep. Foley that made him uncomfortable. I was not shown the content of the messages and was not told they were sexually explicit. It was my recommendation that this complaint be passed along to Rep. Foley’s office and the Clerk who supervised the Page program. This was done promptly. I assume e-mail communication ceased since the former Page never raised the issue again with my office. I believed then, and believe now, that this was the appropriate way to handle this incident given the information I had and the fact that the young man was no longer a Page and not subject to the jurisdiction of the program.<sup>106</sup>

#### *4. Other Foley Conduct Related to Pages or Former Pages*

During this period, Rep. Foley’s chief of staff Kirk Fordham also observed other conduct that raised concerns with him regarding Rep. Foley’s interaction with pages. He observed that pages occasionally showed up at Rep. Foley’s office to have their picture

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<sup>103</sup> Former Kolbe Page Dep. at 40-41. The former Kolbe page continues to deny that he was the source for this story.

<sup>104</sup> Kolbe Dep. at 66.

<sup>105</sup> Kolbe Dep. at 46-48.

<sup>106</sup> Exhibit 6.

taken with him or to get his autograph.<sup>107</sup> In approximately 2002, Fordham learned that Rep. Foley had used his own frequent flyer miles to fly a former page to Washington to visit him.<sup>108</sup> Fordham testified that around this same time, he learned from Rep. Foley's information technology manager, who maintained both Rep. Foley's office and home computers, that Rep. Foley had been having e-mail communications with former pages.<sup>109</sup> The information technology manager informed the Investigative Subcommittee that he did not recall seeing any such e-mail.<sup>110</sup> Fordham did not attempt to view the e-mails or investigate the matter.<sup>111</sup>

Each year the pages vote as to who they would like to appear as speaker during their graduation, and in 2002, Rep. Foley was selected to speak.<sup>112</sup> During the speech, Rep. Foley referred to a number of pages by their nicknames and referred to an instance where he had taken a page in his BMW out to dinner. The page had purchased a dinner with Rep. Foley in the Member's dining room in the Capitol as part of an auction fundraiser for the page program, and Rep. Foley instead took the page to Morton's restaurant.<sup>113</sup> Another page testified that upon overhearing a conversation among a number of pages related to the dinner with Rep. Foley, Peggy Sampson told the group to "watch out" for Rep. Foley:

Ms. Sampson, our Republican page supervisor, I can't remember -- I don't -- she never like sat out there with us but she was passing by, I guess or whatever, inside her little office there, and mentioned in a manner and tone like you would mention watch out for the crazy kid down the street, watch out for that guy. It didn't sound like she knew anything, just he's like the weird kid down the street.<sup>114</sup>

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<sup>107</sup> Fordham Dep. at 12; Lester Int. Tr. at 13.

<sup>108</sup> Fordham Dep. at 12-13.

<sup>109</sup> Fordham Dep. at 30-31.

<sup>110</sup> Dean Lester Interview Transcript at 25-26.

<sup>111</sup> Fordham Dep. at 32.

<sup>112</sup> Trandahl Dep. at 37.

<sup>113</sup> Congressional Record H3281 (June 6, 2002).

<sup>114</sup> Former Page X Int. Tr. at 7-8. After the e-mails and IMs from Rep. Foley became publicly known in September 2006, this former page gave an interview to the press in which he referenced this "warning" about Rep. Foley. Former Page X Int. Tr. at 43.

In response to Rep. Foley's speech, Trandahl deliberately "rigged" the election the following year so that Foley would not speak during graduation.<sup>115</sup>

### **B. Efforts to Address Rep. Foley's Conduct**

Jeff Trandahl, beginning soon after Rep. Foley took office in 1995 through the time that Trandahl left office on November 18, 2005, repeatedly attempted to address Rep. Foley's conduct in a variety of ways. Trandahl testified that he was not aware of any misconduct of a sexual nature by Rep. Foley, and he did not consider Rep. Foley to be a "threat" to the pages.<sup>116</sup> Rather, Trandahl described his concerns as two-fold. First, he believed that Rep. Foley was taking a political risk by paying too much attention to pages. He described this concern as follows:

Here you had -- which I think is appropriate to say -- a closeted gay guy who was putting himself in a situation of being one on one with young people. And if an accusation is made, he would be immediately presumed, in a political light, guilty unless he could prove himself innocent. So my counseling to him was, one, you don't need to be in the middle of this community of children; and two, you are creating an enormous political risk for yourself.<sup>117</sup>

Second, Trandahl was concerned for the integrity of the program in that he believed that Rep. Foley's interaction with the pages was a distraction and was interfering with the program. As described earlier, Trandahl considered Rep. Foley to be a "nuisance," or a person that failed to keep a professional distance from the pages.<sup>118</sup>

#### *1. Communications Directly to Rep. Foley*

Trandahl testified that beginning as early as the mid-nineties, he repeatedly confronted Rep. Foley personally about becoming too involved with the pages and failing

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<sup>115</sup> Trandahl Dep. at 37.

<sup>116</sup> Trandahl Dep. at 28.

<sup>117</sup> Trandahl Dep. at 16.

<sup>118</sup> Trandahl Dep. at 11-13, 16.

to keep a professional distance.<sup>119</sup> Trandahl testified that over the years, he directly confronted Foley on the matter approximately ten times at various places for various reasons. Trandahl testified as follows:

The majority of the time [the discussions with Rep. Foley] happened because I would see him on the floor hanging out by the desk. Other times it would happen because Peggy [Sampson] would say, Jeff, he is back. And other times it would be opportunity. To be perfectly frank, I would find myself standing in a hallway alone with him, or in the lobby, and just trying to reaffirm to him again that I thought he was creating a bad perception for himself.

\* \* \*

But again, I would react because Peggy would say something to me that she felt like he was spending too much time or he was hanging around too much. Linda Miranda from the school would say, well, you know, there was a former page reunion, and Mark Foley's name was widely discussed by the kids. You know, he is obviously communicating with them. My antenna would go up again, that I needed to go back and try and push him back.<sup>120</sup>

During these conversations, Rep. Foley would sometimes appear to agree with Trandahl and at other times he would tell Trandahl that he was being "too intense or too concerned" or that the matter was not Trandahl's concern.<sup>121</sup>

## *2. Communications to Kirk Fordham*

In addition to raising his concerns directly with Rep. Foley, Trandahl testified that he raised his concerns with Rep. Foley's chief of staff Kirk Fordham on multiple occasions, a fact which Fordham confirms. Trandahl testified that he raised the issue with Fordham "a lot more than 10 times," as follows:

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<sup>119</sup> Trandahl Dep. at 16.

<sup>120</sup> Trandahl Dep. at 18, 75.

<sup>121</sup> Trandahl Dep. at 73.

It was pretty much the same thing [as the conversations with Rep. Foley], which is I felt uncomfortable that Mark [Foley] was spending too much time, I felt he was creating a political situation for himself, a terrible perception. And to be perfectly frank, I was on Kirk so much I was surprised he didn't turn around and run every time he saw me.<sup>122</sup>

Trandahl testified that Fordham shared his concerns and was always "100 percent agreeable" to addressing the problem. "[Fordham] would say, I will sit down and I will talk to Mark. Other times he would say: You need to grab Mark and say this to Mark and I will try to talk to him separately. So Kirk was always agreeable."<sup>123</sup> Both Trandahl and Fordham testified that these conversations regarding Rep. Foley's interactions with pages did not stem from a specific complaint or allegation but rather a general concern that pages and Members should keep a professional distance from one another.<sup>124</sup>

Fordham testified that as a result of Trandahl's concerns, he also confronted Rep. Foley on his relationship with pages on several occasions. Fordham described one of those conversations as follows:

I went in to the boss and again -- very uncomfortable conversation to have -- and again relayed basically what Mr. Trandahl had shared with me. I reminded him that because, you know, he is gay -- most of his colleagues had figured that out, even though he hadn't announced that he was, you know, people were watching what he did. There [sic] were paying attention to his behavior, and he needed to be more conscious of how he interacted with younger staffers, interns, pages. So it was a short conversation. We never had long discussions about this stuff. It is not something I look forward to doing.<sup>125</sup>

After his conversations with Rep. Foley and Fordham, Trandahl noticed some positive effects. For example, he would notice that Rep. Foley was not hanging around the

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<sup>122</sup> Trandahl Dep. at 19.

<sup>123</sup> Trandahl Dep. at 73.

<sup>124</sup> Fordham Dep. at 8, 15; Trandahl Dep. at 73.

<sup>125</sup> Fordham Dep. at 10.

page desk as much. However, after some time had passed, Rep. Foley would revert back to his former conduct.<sup>126</sup>

Fordham left Rep. Foley's office in January 2004 and later returned to House employment as chief of staff to Rep. Tom Reynolds in September 2005. He did not share with Rep. Reynolds any of his concerns, experiences, or observations about Rep. Foley and pages or former pages.<sup>127</sup>

### *3. Communications with Ted Van Der Meid*

Trandahl testified that he also raised his two-fold concerns regarding Rep. Foley on a number of occasions to the Speaker's counsel and director of floor operations, Ted Van Der Meid.<sup>128</sup> Trandahl approached Van Der Meid because, in addition to serving as the Speaker's director of floor operations, Van Der Meid was assigned as the Speaker's liaison with the Clerk's office, including for matters related to the page program.<sup>129</sup> Specifically, as with Rep. Foley and Fordham, Trandahl told Van Der Meid that Foley's conduct with pages was distracting them from performing their page program duties and that Rep. Foley's excessive attention to the pages could be perceived as inappropriate and could harm Foley's reputation.<sup>130</sup> As noted previously, Trandahl also informed Van Der Meid about the incident in which Rep. Foley allegedly was intoxicated outside of the page dorm.<sup>131</sup>

According to Trandahl, he raised his concerns about Rep. Foley to Van Der Meid "pretty often" in the context of raising similar concerns he had relative to Van Der Meid's over-involvement with pages assigned to the Speaker's office. Trandahl testified, "So here is my point of contact in the Speaker (sic), and I'm trying to have the conversation about

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<sup>126</sup> Trandahl Dep. at 20.

<sup>127</sup> Fordham Dep. at 4-5, 38.

<sup>128</sup> Van Der Meid served as the staff director and chief counsel of the Committee on Standards of Official Conduct from 1995-99. Van Der Meid Dep. at 6.

<sup>129</sup> Van Der Meid Dep. at 21-22; Trandahl Dep. at 27, 88. Trandahl testified that he discussed Rep. Foley's conduct with respect to pages with the highest authority in the "chain of command," Van Der Meid, and that although he respected the "chain of command," he felt constrained by it at times. Trandahl Dep. at 88.

<sup>130</sup> Van Der Meid Dep. at 40, 59.

<sup>131</sup> Van Der Meid Dep. at 94-95.



him specifically, but also in a general sense.”<sup>132</sup> According to Trandahl, while Van Der Meid understood his concerns “politically,” Van Der Meid’s “pushback” was that “there is nothing wrong with people being mentors and caring about the kids.”<sup>133</sup> Trandahl responded that the page program had paid professionals to serve those functions. Trandahl felt that “there needed to be a very clear line between the page program and people who worked up here [in leadership].”<sup>134</sup>

Van Der Meid did not report Trandahl’s concerns about Rep. Foley’s conduct to anyone else in the Speaker’s Office. During his testimony, Van Der Meid stated that the decision as to whether to elevate a matter within the Speaker’s Office was a “judgment call.”<sup>135</sup> He explained that he did not elevate the Foley matter because he “got the impression that [Trandahl] was dealing with it.”<sup>136</sup> Van Der Meid stated, “I think I just got the impression that [Trandahl] had talked to Kirk [Fordham], and that was how he handled it.”<sup>137</sup> He further testified that “[Trandahl] had never asked me to take any other action,” and in any event, “I don’t know what I would have done.”<sup>138</sup>

#### *4. Communications with Scott Palmer*

According to both Trandahl and Fordham, in late 2002 or early 2003 Trandahl again approached Fordham about Rep. Foley’s interaction with the pages.<sup>139</sup> Trandahl believes this conversation may have been in part a reaction to Rep. Foley’s graduation speech to the pages, while Fordham believes it may have been precipitated by Rep. Foley’s alleged visit to the page dorm while intoxicated.<sup>140</sup> Fordham and Trandahl had become frustrated that their previous efforts in getting through to Rep. Foley had been unsuccessful, and they

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<sup>132</sup> Trandahl Dep. at 30-32. Van Der Meid does not recall Trandahl criticizing his interaction with pages and testified that his interactions with pages were appropriate. Van Der Meid Dep. at 46-54.

<sup>133</sup> Trandahl Dep. at 30.

<sup>134</sup> Trandahl Dep. at 30.

<sup>135</sup> Van Der Meid Dep. at 112.

<sup>136</sup> Van Der Meid Dep. at 56.

<sup>137</sup> Van Der Meid Dep. at 62.

<sup>138</sup> Van Der Meid Dep. at 82.

<sup>139</sup> Trandahl Dep. at 33.

<sup>140</sup> Trandahl Dep. at 36; Fordham Dep. at 18. Fordham’s recollection on this point appears incorrect. Other witnesses place this alleged page dorm incident before 2000.

brainstormed for more effective ways to modify Rep. Foley's behavior. Fordham suggested that the matter be brought to the attention of Speaker Hastert's chief of staff, Scott Palmer, with a view towards having either Palmer or the Speaker himself talk to Rep. Foley. Trandahl agreed.<sup>141</sup>

Shortly thereafter, according to Fordham, Fordham called Palmer to set up a meeting, and Fordham and Palmer met in a conference room in the Capitol.<sup>142</sup>

I just put in a call directly to Palmer. I remember it was uncomfortable. I just told him I had to talk to him about something personal. I told him it was urgent. So I don't remember if he set a specific time, or just come down now, but it was immediately thereafter, within the same day.

I walked over to his office in the Capitol. Met him at his office, and then we walked upstairs to a -- I remember it was a small room, much smaller than this, but it had a table and a few scattered chairs. It was somewhere I had never been before. Somewhere up on the 3rd or 4th floor.<sup>143</sup>

Fordham testified that he explained to Palmer that that he had received calls from the Clerk's office regarding Foley's conduct around the pages, that "there seems to be a chronic problem with my boss's attention to pages and young staffers," and that he was looking for assistance in dealing with the problem.<sup>144</sup>

My plea to him was sort of that we needed to figure out a way to send a message to Mark [Foley] that would be clear, that there were other eyes keeping an eye on him when he was interacting with pages, so that perhaps if he knew more than - - that it wasn't just me calling him on this, that there were other people in leadership that were aware, that this was in fact something that he needed to correct.

And, you know, we had a frank conversation about, you know, Mark. He [Palmer] liked Mark. He saw him in the

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<sup>141</sup> Trandahl Dep. at 33; Fordham Dep. at 21-22.

<sup>142</sup> Fordham Dep. at 22-23.

<sup>143</sup> Fordham Dep. at 22.

<sup>144</sup> Fordham Dep. at 23.

whip meetings every week. We were both sort of exasperated about the fact he's got a bright future, he is a talented Member; and couldn't understand why he would put himself in such a position, that it was sort of reckless behavior.

And so I asked him if he or the Speaker would speak to Congressman Foley and just have a brief conversation about this. And it was mainly because I knew that if one of them had talked to Mark that the message certainly would have gotten through to Mark. That it would have shaken him up a bit.<sup>145</sup>

Fordham says that he did not tell Palmer about the page dorm incident he had heard about from Trandahl.<sup>146</sup> Fordham testified that, at the conclusion of the meeting, Palmer agreed that either he or the Speaker would talk to Foley about the matter.<sup>147</sup>

Fordham testified that a day or two later, he and Palmer had a brief follow-up telephone conversation in which Palmer told Fordham that he had spoken to Rep. Foley, they had a good conversation, and that Rep. Foley "understood the message." Fordham testified that Palmer also said that he had "brought the Speaker into the loop."<sup>148</sup>

Trandahl testified that he was not told about the meeting with Palmer or invited to attend the meeting. He said that within a few days after he and Fordham had decided to bring the matter to Palmer, Palmer said to him in a short conversation in the Speaker's suite, "I've talked to Kirk Fordham. I understand the problem. I'm on it."<sup>149</sup> According to Trandahl, he recalls this "vividly" because he had expected to take part in the meeting and he was "dumbfounded" that the meeting had occurred without him.<sup>150</sup>

According to Fordham, several months after his meeting with Palmer, "Congressman Foley [] made reference about someone had given him a warning or

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<sup>145</sup> Fordham Dep. at 24-25.

<sup>146</sup> Fordham Dep. at 24.

<sup>147</sup> Fordham Dep. at 27.

<sup>148</sup> Fordham Dep. at 27.

<sup>149</sup> Trandahl Dep. at 38.

<sup>150</sup> Trandahl Dep. at 38, 42.

something like that. And I let him know that I knew that Palmer had talked to him about it.”<sup>151</sup>

Palmer testified that he does not recall any meeting with Kirk Fordham, confrontation with Rep. Foley, or conversation with Trandahl after the alleged meeting with Fordham.<sup>152</sup> When asked about his alleged meetings with Fordham and Rep. Foley, Palmer testified as follows:

A I understand your question. I’ve thought about this question just about every minute since that Wednesday when this question was raised, and that’s several long weeks. I have agonized over this to try to capture any recollection of this and the other piece of it, too. I mean, trying to remember what he might have said to me, but also always combined with whatever it is he thinks he said to me is the notion that I would have talked to Mark Foley, and I’ve tried to visualize that conversation, and I just can’t visualize it. At the time it’s hard to imagine I would forget it.

Q And in trying to visualize the conversation you had with Mark Foley about conduct in general with pages, however you want to characterize it, inappropriate, overfriendly, any conduct is something that that didn’t happen?

A I believe it didn’t happen. I don’t have any recollection of it. Again, I’m in the zone of trying to prove a negative, but I just don’t remember it, and I think it would have been an awkward conversation.

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I’ve been very careful with the committee, or I’ve tried to be very careful, in not saying that I can’t prove a negative. I think I know what the limits are. I know what I remember, which unfortunately is nothing, or maybe fortunately, because that may be the truth. It may never have happened, and I know how I behave well enough to know that he could not have come to me, recollection or

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<sup>151</sup> Fordham Dep. at 29.

<sup>152</sup> Palmer Dep. at 44-54, 163-74. Shortly after Foley’s resignation, apparently in response to what he believed were statements by Fordham, Palmer issued a one-sentence press statement, stating that “What Kirk Fordham said did not happen.” Exhibit 7.

not, and told me about behavioral problems, something that was going to put pages in danger, something that was happening without my doing something about it. . . . When you add to it the other piece, because there are two pieces here, There's him talking to me, which I'm supposed to try to remember, and then talking to the Foley. I just can't get around talking to Foley. I can't visualize that. I can't craft that in any way.<sup>153</sup>

As noted in part II of this report, the Committee was unable to address with Rep. Foley whether this meeting occurred.

##### *5. Communications with Other Members of the Page Board*

Trandahl testified that in the late nineties, he also raised the matter of Rep. Foley's conduct around the pages with Rep. Kolbe, who was a member of the Page Board from 1995 to 2001. Trandahl explained the context of his appeal to Rep. Kolbe as follows:

Okay. The whole reason it was discussed the way it was discussed was because I viewed Jim Kolbe the same way, I viewed him as putting himself at risk. He, too, spent far too much time socially interacting with the pages. I was uncomfortable with it. And, you know, I voiced that to his chief of staff; Fran, his administrative assistant; Patrick Baugh; and to Jim Kolbe himself. And I do remember discussing and bringing Mark up to him and saying, you know, that I felt he was doing the same thing, and that I needed it all to stop.<sup>154</sup>

According to Trandahl, Rep. Kolbe remained involved in the page program after his Page Board service and continued to be among the people that Trandahl considered a "nuisance" in terms of being too involved in the program. Although he apparently did not again directly address the conduct of Rep. Foley with Rep. Kolbe, Trandahl said he continued to raise his concerns about Rep. Kolbe "on multiple occasions" directly to Rep. Kolbe and also to McNaught and Baugh. Trandahl testified that that while McNaught

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<sup>153</sup> Palmer Dep. at 163-64, 172.

<sup>154</sup> Trandahl Dep. at 22.

and Baugh were sympathetic “and would confirm to me that they talked to [Kolbe] multiple times as well . . . . Unfortunately, they would tell me that [Kolbe] would tell them to kind of mind their own business.”<sup>155</sup>

Aside from his unsuccessful attempt at addressing the matter with Rep. Kolbe in the late nineties, Trandahl did not raise his concerns about Rep. Foley to members of the Page Board. Trandahl testified that Rep. Shimkus approached him on the House floor in approximately 2004 with general concerns that had been relayed to him from another Member regarding Rep. Kolbe’s interaction with pages, and Trandahl told him that “Foley is a bigger problem to me.”<sup>156</sup> But aside from this brief exchange, Trandahl never raised the Foley issue at a Page Board meeting or individually to any other member of the Board. Trandahl explained that he did not raise the Foley issue with the Page Board because he believed that he was dealing only with a “nuisance” or “distraction,” not a threat to the pages.<sup>157</sup>

### **C. Rep. Foley’s E-Mails to a Former Alexander Page**

In July 2005, near the end of his page term, a page sponsored by Rep. Rodney Alexander gave thank-you cards to a number of Members and staff whom he had come to know during his time as a page. One of the Members was Rep. Foley. Rep. Foley asked the Alexander page to write his e-mail address on the back of the card, and he did so.<sup>158</sup> On July 29, 2006, at 1 p.m. on the Alexander page’s last day as a page, he received the first of seven e-mails he would eventually receive from Rep. Foley. That e-mail, sent from the e-mail address Maf54@aol.com, contained the single sentence “do I have the right email,” and concluded with Mark Foley’s name.<sup>159</sup>

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<sup>155</sup> Trandahl Dep. at 106-07.

<sup>156</sup> Trandahl Dep. at 23-25. Rep. Shimkus does not recall any conversation with Trandahl about Rep. Foley other than the November 2005 matter involving the e-mails. Representative John Shimkus Dep. (hereinafter Shimkus Dep.) at 18.

<sup>157</sup> Trandahl Dep. at 21.

<sup>158</sup> Former Alexander Page Dep. at 17-18.

<sup>159</sup> Exhibit 8.

After receiving a short response confirming that he had the right e-mail address, Rep. Foley sent another e-mail the following day to the now former page asking a number of casual questions. The former page responded the following afternoon, and that evening he received another e-mail from Rep. Foley containing more general conversation, concluding with the question “how old are you now?” The former page responded a week later, telling Rep. Foley he was then 16 and would be 17 in December. Rep. Foley responded that same day, asking the former page “what do you want for your birthday coming up . . . what stuff do you like to do.” The former page responded twelve days later, writing among other things, “I don’t know what I want for my birthday” and describing his hobbies and interests, including that he likes to do “what generally every other teenager does.” He also asked if Rep. Foley was “keeping up with [the first name of another former page].” Rep. Foley responded that night asking whether the former Alexander page was asking about [the full name of the other former page]. Four days later, on August 23, Rep. Foley wrote to the former Alexander page again referring to the other page as “a nice guy” who is “in really great shape.”<sup>160</sup>

In an e-mail on August 29, Rep. Foley asked the former page how he was weathering hurricane Katrina,<sup>161</sup> and also asked him to e-mail Rep. Foley a “pic” of himself. This request alarmed the former Alexander page, who was already concerned regarding the frequency and the tenor of the earlier e-mails. He raised his concerns to Danielle Savoy, an Alexander employee whom he had come to know while he was a page. In an e-mail to Savoy, the former page described Rep. Foley’s e-mails and said that Rep. Foley “is starting to freak [him] out.” At Savoy’s request, the former Alexander page then forwarded portions of Rep. Foley’s e-mails to her, characterizing them as “sick, sick, sick . . .” On August 31, 2005, the former page forwarded to Savoy the entirety of Rep. Foley’s portion of five of the actual e-mails and asked her what she thought of them.<sup>162</sup>

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<sup>160</sup> Exhibit 8.

<sup>161</sup> In an e-mail the previous day, the former Alexander page had mentioned the approaching hurricane but had explained that he lived in northern Louisiana, so the hurricane would not hit him. Exhibit 8.

<sup>162</sup> Exhibit 8.

On September 1, Savoy discussed the e-mails with another Alexander employee, Jonathan Johnson, who did not think that they were particularly significant.<sup>163</sup> Savoy, looking for another opinion, then forwarded the e-mails, including the e-mails between her and the former page, to her girlfriend, Kelley Halliwell, who was a former House employee who was then working for a small lobbying firm.<sup>164</sup> Late on September 1, the former Alexander page again e-mailed Savoy and asked, “Just wondering . . . are you showing these e-mails to anyone? I would prefer you not to.”

Upon receiving the e-mails, Halliwell forwarded them to her boyfriend, Justin Field, who then worked for the House Democratic Caucus, and also to her boss, Mike Grisso, a registered lobbyist.<sup>165</sup> Field was disturbed by the nature of the e-mails, and shortly after he received them, he shared them with his friend and colleague, Matt Miller, who was then the communications director for the Democratic Caucus. The two discussed the nature of the e-mails and possible actions. Miller believed that the e-mails were inappropriate, and suggested that they be given to the press.<sup>166</sup> Miller testified that he considered providing the e-mails to the Committee on Standards or to the Page Board, but feared that “nothing would come” of such action. He says that he also considered providing them to law enforcement, but believed that the e-mails, though inappropriate, did not evidence the commission of a crime.<sup>167</sup>

Miller testified that in approximately November, 2005 he redacted Savoy’s e-mail address and Field’s name from the top of a printed copy of the e-mails and faxed them to reporters that he knew at both the *Miami Herald* and the *St. Petersburg Times*.<sup>168</sup> Miller

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<sup>163</sup> Savoy testified that she told Johnson about contents of the e-mails in some detail, including the request for a picture, and the references to a birthday gift and the other page. Johnson recalls only that he was advised that their former page had received some e-mails that made him uncomfortable from an unspecified source. Danielle Savoy Deposition (hereinafter Savoy Dep.) at 37-44; Jonathan Johnson Interview Transcript at 9-11.

<sup>164</sup> Savoy Dep. at 45-47; Interview Summary of Kelley Halliwell (hereinafter Halliwell Int. Sum.).

<sup>165</sup> Halliwell Int. Sum. Grisso states that he did not discuss or share the e-mails with anyone. Interview Summary of Mike Grisso.

<sup>166</sup> Matthew Miller Deposition (hereinafter Miller Dep.) at 13-14; Justin Field Interview Transcript (hereinafter Field Int. Tr.) at 8-9.

<sup>167</sup> Miller Dep. at 14-15.

<sup>168</sup> Miller Dep. at 10-11, 22-35. Miller believes that he withheld the e-mails between Savoy and the former Alexander page from the *Miami Herald*. Miller Dep. at 26.



said that later in November or in December, he also provided the e-mails to a reporter from *Roll Call*. Both Field and Miller testified that neither then-Rep. Menendez, who was then chairman of the Democratic Caucus, nor any other person in the office of the Democratic Caucus, was provided with the e-mails or was involved in the decision to provide them to the press.<sup>169</sup> Miller testified that also during the fall of 2005, in part as a “gut check” regarding his impression of the e-mails, he provided the e-mails to the communications director of the Democratic Congressional Campaign Committee (“DCCC”). Miller testified that he was not aware of what actions his DCCC counterpart may have taken with respect to the e-mails, but he expected that he would share them with the press. Miller testified:

I think I gave them to him not with any direct expectation, but with the understanding that [the DCCC communications director] is someone that talks to reporters all day. If there’s something that I’m missing, maybe -- maybe there’s a way that he could get the -- you know, that he could give them to a reporter; you know, in the course of talking to reporters that he might find a way. I didn’t have any direct expectation, but in general.<sup>170</sup>

#### **D. Inquiries by the *St. Petersburg Times***

Miller testified that he had a number of conversations with the *Miami Herald* reporter after providing her with the e-mails. According to Miller, the reporter told him that the *Herald* did not actively pursue the story out of concern over the authenticity of the e-mails and a reluctance to contact the minor page.<sup>171</sup> The *St. Petersburg Times*, however, made a number of inquiries. In mid-November 2005, a reporter from the *St. Petersburg Times* contacted the offices of both Rep. Foley and Rep. Alexander about the e-mails.<sup>172</sup> Rep. Foley spoke with the reporter personally and explained that the e-mails were innocent. He said that he was merely checking up on the page after Hurricane Katrina, that he

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<sup>169</sup> Miller Dep. at 40; Field Int. Tr. at 12.

<sup>170</sup> Miller Dep. at 21-22.

<sup>171</sup> Miller Dep. at 26-27. Miller testified that he had no communications with the *Roll Call* reporter after he provided the e-mails.

<sup>172</sup> Miller Dep. at 33-34.

maintained contact with many former interns and pages who often sought job recommendations, and that he considered himself to be mentoring the former page.<sup>173</sup>

In November 2005, the former Alexander page received a call on his home phone from a reporter at the *St. Petersburg Times*. The reporter told the former page that he had the e-mails Rep. Foley had sent to him and explained that the reporter was working on a story about them because he thought it “would be good for the people in the District to know what kind of person is representing them in Congress.” The former Alexander page spoke to the reporter but “tried to keep it vague.”<sup>174</sup>

After speaking to the former Alexander page, the *St. Petersburg Times* reporter contacted Rep. Alexander’s press secretary, Adam Terry. According to Terry, the reporter described the e-mails, indicated that Savoy was a party to them, and sought comment. The reporter asked if Alexander’s office knew anything about the e-mails, and if so, why Rep. Alexander’s office had not done anything about them.<sup>175</sup>

At Terry’s request, Savoy produced the e-mails, and a discussion followed within Rep. Alexander’s office as to how to handle the matter. According to Rep. Alexander, at one point he also talked to the reporter and opined that although he would not have sent any similar e-mails, he could not judge whether they were inappropriate. Rep. Alexander testified that he “couldn’t really understand what the big deal was,” and suspected that the reporter “knew a whole lot more than what we were looking at in the e-mails.”<sup>176</sup> According to Terry and Rep. Alexander, in the course of these discussions, Terry had noticed that the reporter was missing one of the e-mails from the former Alexander page. After discussing this with both Rep. Alexander and Rep. Alexander’s chief of staff, Royal Alexander,<sup>177</sup> he sent the reporter the complete set of the e-mails.<sup>178</sup> Terry did not consult or obtain permission from the former page or his family before doing so.<sup>179</sup>

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<sup>173</sup> Miller Dep. at 34; Liz Nicholson Deposition (hereinafter Nicholson Dep.) at 8, 13-14.

<sup>174</sup> Alexander Former Page Dep. at 43-47. The former page repeatedly asked the reporter how he had obtained the e-mails, but the reporter refused to reveal his source.

<sup>175</sup> Adam Terry Interview Transcript (hereinafter Terry Int. Tr.) at 7-9, 20.

<sup>176</sup> Representative Rodney Alexander Deposition (hereinafter Rep. Alexander Dep.) at 22-23.

<sup>177</sup> Royal Alexander is not related to Rep. Alexander.

According to Rep. Alexander and Royal Alexander, at Rep. Alexander's direction, Royal Alexander called the former page's parents and warned them that they might be contacted by the press about the Foley e-mails. The former Alexander page's father recalls that Royal Alexander told him that a reporter might be calling him but that he did not have to talk to the reporter.<sup>180</sup> The father also recalled that Royal Alexander made a comment to the effect that "they were trying to make something of [the e-mails]" and that "the Democrats would like to use something like this" against a Republican.<sup>181</sup> During their conversation, the father did not make any requests or provide any instructions not to disclose the matter to other Members of Congress or conduct an investigation into the matter.<sup>182</sup>

The former page's mother recalls being asked by Rep. Alexander's staff whether the family wanted to pursue anything in connection with the e-mails, and that she said that she did not feel there was anything in the e-mails to pursue. She recalls telling them in substance to "do what you need to do," but that she did not want the matter "blown out of proportion."<sup>183</sup> The parents asked that the contact from Rep. Foley stop, and they expressed their desire that their son not be involved in a public ordeal.

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<sup>178</sup> Terry Int. Tr. at 19-20. Terry stated "You have a reporter calling you from *St. Petersburg Times* so he is about to write a story. Our concern was, he needs to know everything if he is going to write about the e-mail dialogue. Let's get it all to him." Terry Int. Tr. at 19. Rep. Alexander testified that the reporter was missing the e-mail from the page to Savoy asking her not to share the e-mails, and that they forwarded that e-mail to fend off a claim that they "were trying to cover something up." Alexander Dep. at 16.

<sup>179</sup> Terry Int. Tr. at 51.

<sup>180</sup> Father of Former Page Dep. at 13.

<sup>181</sup> The father testified as follows:

A I think he said that -- he said the Democrats would like to use something like this to smear a Republican.

Q Did he say words like that?

A He didn't say the word "smear" but he did mention the Democrats would like to -- would love to use something like this; something to that effect.

Q What did he say about the Democrats?

A That they would love to have something, to get something -- I don't remember verbatim, but to the effect they would like to get something on a Republican, you know, make something out of it.

Father of Former Page Dep. at 20.

<sup>182</sup> Father of Former Page Dep. at 24.

<sup>183</sup> Mother of Former Page Dep. at 17.

The *St. Petersburg Times* ultimately did contact the former page's parents, who declined to comment and made "vehement pleas to drop the matter." The *St. Petersburg Times* decided not to run a story on the e-mails, concluding that it "did not have enough substantiated information to reach beyond innuendo."<sup>184</sup>

After Rep. Foley resigned, Alexander's office contacted the family of the former page to suggest that a public statement from the family might help alleviate the media pressure being placed on Alexander's office and deter further media attention on the family.<sup>185</sup> According to the former Alexander page's father, the family edited a suggested statement sent by Rep. Alexander's office to reflect their own language and because the statement provided by Rep. Alexander's office contained information that the family could not have known.<sup>186</sup>

### **E. Intervention by Trandahl and Rep. Shimkus**

#### *1. Rep. Alexander's Office Contacts the Speaker's Office*

In response to the call from the *St. Petersburg Times* and the conversation with the former page's parents, Rep. Alexander directed Royal Alexander to contact the Speaker's office to advise them of the situation and to seek their assistance in ensuring that Rep. Foley stop contacting the former Alexander page. Although there were significant differences in the testimony regarding the manner in which that contact occurred, there was general agreement that the Speaker's office was notified, and that the Speaker's office referred the matter to the Clerk of the House to take the lead in addressing the issue.

According to Royal Alexander, on November 17, 2005, he contacted Mike Stokke, the Speaker's deputy chief of staff, to brief him on the matter. Royal Alexander contacted Stokke because he knew him personally. Royal Alexander says that he explained the matter

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<sup>184</sup> Neil Brown, "Why the Times didn't publish the Foley e-mails," *St. Petersburg Times*, October 5, 2006; Miller Dep. at 40.

<sup>185</sup> Father of Former Page Dep. at 32, 43, 45-46; Terry Int. Tr. at 44.

<sup>186</sup> Father of Former Page Dep. at 36.

on the telephone to Stokke and generally described the e-mails as overly friendly, although he does not recall the precise words he used. He testified that he is certain that he did not share the e-mails with Stokke or with anyone else, because he was trying to protect the privacy of the former page.<sup>187</sup> Royal Alexander testified that Stokke responded by saying “we know,” or words to that effect, and that he was relieved by this response because he thought that it meant that the Speaker’s office was aware of the issue and would take care of it.<sup>188</sup> Royal Alexander also testified that Stokke told him that someone from the Clerk’s office would get in touch with him on the matter, and the next event he recalls is receiving a call from a woman in the Clerk’s office telling him that they were “working on addressing the situation.” He does not recall the specific person who called or her precise words, but he understood that she was referring to the Foley matter. Royal Alexander could not place the date of this phone call, but he believes it was within a week of his phone call with Stokke.<sup>189</sup>

Mike Stokke confirms receiving a phone call from Royal Alexander, but he recalls that Royal Alexander then came to Stokke’s office to discuss the matter in person. According to Stokke, during this meeting in his office, Royal Alexander showed, read, or summarized the e-mails to him, but did not provide him with a copy. Stokke, believing that he had no responsibility for the page program, said that his “intention was to solve the problem that they had brought to us, which is how do we prevent this Member from having . . . continued inappropriate contact with this page, and figure out the right place for this to go, and to have that person” prevent future contact with the page.<sup>190</sup> He therefore asked his assistant, Tim Kennedy, to consult Van Der Meid as to whom the matter should be referred. Van Der Meid advised that the matter should be referred to the Clerk of the House, because the page program was under the Clerk’s jurisdiction.<sup>191</sup> Accordingly, Stokke recalls that Royal Alexander was put in touch directly with the Clerk, Jeff Trandahl. Stokke testified

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<sup>187</sup> Royal Alexander Deposition (hereinafter Royal Alexander Dep.) at 50.

<sup>188</sup> Royal Alexander Dep. at 48-50, 53.

<sup>189</sup> Royal Alexander Dep. at 59-63.

<sup>190</sup> Stokke Dep. at 55-56.

<sup>191</sup> Stokke Dep. at 21-46.

that while he was concerned about the request for a picture,<sup>192</sup> he did not report the matter to either Speaker Hastert or his chief of staff, Scott Palmer.<sup>193</sup>

Trandahl testified that he first heard about the e-mails from Tim Kennedy, the assistant to Stokke and Van Der Meid, who called him and told him generally that there had been an e-mail exchange between Rep. Foley and a former page from Rep. Alexander's office.<sup>194</sup> Trandahl testified that he immediately called Rep. Alexander's office and talked to Royal Alexander. According to Trandahl, Royal Alexander explained that one of Rep. Alexander's former pages had been receiving e-mails from Rep. Foley that were making the former page uncomfortable, that the press was calling the former page's family, and that the parents of the former page wanted the contact from Rep. Foley to stop.<sup>195</sup> Royal Alexander also reportedly told Trandahl that the family did not want their name in the newspaper and "just wanted it all to go away."<sup>196</sup> Trandahl recalls that he asked several times for copies of the e-mails, but that Royal Alexander was unwilling to provide them.<sup>197</sup> Trandahl also asked repeatedly whether the e-mails were sexually explicit, and he was told that they were not, but were merely "overly friendly" or "too familiar."<sup>198</sup>

No notes or memoranda were prepared within the Speaker's office to record that Alexander's office had brought the e-mails to their attention or that the matter had been referred to the Clerk.<sup>199</sup>

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<sup>192</sup> Stokke Dep. at 34-35.

<sup>193</sup> Stokke Dep. at 55. Similarly, Van Der Meid said that he did not inform the Speaker regarding the e-mails, and could not recall informing Palmer. Van Der Meid Dep. at 142. Kennedy also testified that within the Speaker's office, to his knowledge, only he, Van Der Meid, and Stokke were aware of the e-mails in November, 2005. Kennedy Dep. at 41.

<sup>194</sup> Trandahl Dep. at 48-49.

<sup>195</sup> Trandahl Dep. at 51-52.

<sup>196</sup> Trandahl Dep. at 50-52.

<sup>197</sup> Trandahl Dep. at 52.

<sup>198</sup> Trandahl testified as follows: "And then I was like, okay, will you read them to me? Will you -- what are these things? Are they sexually explicit? I must have used the words 'sexually explicit' about 20 times in that conversation, saying characterize them for me then. And that's where the famous 'overly friendly' came from. It was me saying are they overly friendly, if they're not sexual? Why are people uncomfortable?" Trandahl Dep. at 52.

<sup>199</sup> Stokke Dep. at 69, 78-79, 94-95; Kennedy Dep. at 107.

Regardless of how the matter had been referred to Trandahl, once the matter had been brought to his attention, Trandahl resolved to confront Rep. Foley in order to get him to stop contacting the former Alexander page and to again raise with Rep. Foley the concerns he had been raising for years regarding Rep. Foley's interaction with pages.

## *2. Trandahl and Rep. Shimkus Confront Rep. Foley*

Following his conversation with Royal Alexander, Trandahl immediately called Rep. Foley's chief of staff to set up a meeting with Rep. Foley. He then went to the House floor with his deputy clerk, Gerry Vans, in search of Rep. Shimkus, the chairman of the Page Board, to ask him to accompany him to Rep. Foley's office.<sup>200</sup> Trandahl found Rep. Shimkus on the floor, briefed him on the matter, and explained that a "Member-to-Member [confrontation with Rep. Foley] would be much more effective than just me."<sup>201</sup> Trandahl testified that he further explained to Rep. Shimkus that "this is exactly the perception problem I've warned Mark Foley about multiple times," and that he characterized Rep. Foley to Rep. Shimkus as a "ticking time bomb."<sup>202</sup> Rep. Shimkus describes the communication from Trandahl as "They [the parents of the former page] are asking us to approach Congressman Foley and ask him to stop contacting their son via e-mail, and they want this kept in confidence."<sup>203</sup> According to Rep. Shimkus, Trandahl also had an 8½ by 11 inch sheet of paper which included words and phrases, and which Rep. Shimkus recalls saying something about Hurricane Katrina and asking for a "pic."<sup>204</sup>

Rep. Shimkus agreed to accompany Trandahl to confront Rep. Foley, and the two of them went to Rep. Foley's office in the Cannon House Office Building later that day, November 17, 2005. During the meeting, which also included Foley's new chief of staff Liz Nicholson, Rep. Shimkus directed Rep. Foley to cease all communications with the former Alexander page and to stay away from the page program in general. Rep. Shimkus recalls

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<sup>200</sup> Trandahl Dep. at 53-54.

<sup>201</sup> Trandahl Dep. at 56.

<sup>202</sup> Trandahl Dep. at 57-58.

<sup>203</sup> Shimkus Dep. at 10.

<sup>204</sup> Shimkus Dep. at 10. Trandahl does not recall learning anything about the contents of the e-mails at this time, including the request for a picture, and he does not recall having any piece of paper with him when he met with Shimkus or Foley. Trandahl Dep. at 84, 59.

that he gave Rep. Foley the single sheet of paper that Trandahl had reportedly given him. Rep. Shimkus testified that Rep. Foley said that if he was being accused of being “overly friendly,” then he was “guilty,” and explained that he was “mentoring” the page, as Rep. Foley himself had been mentored and encouraged in politics when he was young.<sup>205</sup> Trandahl recalls that Rep. Shimkus asked Rep. Foley whether there were any additional communications with House pages, and Rep. Foley “left the impression” that this was the only former page that he was actively talking to.<sup>206</sup> According to Nicholson, Trandahl may have also told Rep. Foley at the meeting, “Mark, you’ve been warned by Scott before.” After Trandahl and Rep. Shimkus had departed, Nicholson asked Rep. Foley what Trandahl was referring to by this comment, and Rep. Foley “said something about -- that Scott Palmer had talked to him once before about . . . mentoring with youths and things like that.”<sup>207</sup>

Trandahl briefed Van Der Meid on the confrontation with Rep. Foley either in the Speaker’s office immediately after the meeting or later that night on the House floor.<sup>208</sup> According to Van Der Meid, this conversation was the first time he learned any details regarding the matter, including that the matter involved Rep. Foley.<sup>209</sup> According to Stokke, he followed up with Tim Kennedy at the end of the week as to whether they had heard anything from the Clerk’s office relative to the resolution of the Foley e-mail matter, and Kennedy reported that Trandahl had intervened with Rep. Foley and that the matter had been resolved to the satisfaction of the former page and the parents.<sup>210</sup> Van Der Meid recalls that he had a similar wrap-up conversation with Stokke.<sup>211</sup> Trandahl’s last day as Clerk of the House was the next day, Friday, November 18, 2005.

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<sup>205</sup> Shimkus Dep. at 19.

<sup>206</sup> Trandahl Dep. at 99-100. Rep. Shimkus testified that he did not ask Rep. Foley if he had been in contact with other pages. Shimkus Dep. at 20.

<sup>207</sup> However, Nicholson later testified that it might have been Kirk Fordham who said this to Foley at a meeting she recalls occurring a few weeks after the November 17 confrontation. Nicholson Dep. at 19-20, 26, 98-100.

<sup>208</sup> Trandahl recalls that the briefing occurred immediately after the meeting, while Van Der Meid testified that it occurred that night on the House floor. Trandahl Dep. at 65-67; Van Der Meid Dep. at 131-35.

<sup>209</sup> Van Der Meid Dep. at 133.

<sup>210</sup> Stokke Dep. at 69-70.

<sup>211</sup> Van Der Meid Dep. at 139-41.



Rep. Shimkus testified that he did not consider involving other members of the Page Board in addressing the matter of the Foley e-mails. Rep. Shimkus explained this decision as follows:

Well, first of all, the excerpts of the e-mail were such that this is a former page. They are not a current page. It is a request of the parents to intervene. There is nothing explicit in these e-mails that would rise to the level of concern that there is anything other than what it says on this e-mail. We were asked to address this by the parents in confidence, and that is -- I weighed on doing something that is not easy to do, addressing a colleague on something of this nature and keeping confidence with the parents. That is why.<sup>212</sup>

After Rep. Foley resigned, on approximately October 2, 2006, Rep. Shimkus told fellow Page Board member Rep. Shelley Moore Capito that he believed he had done the right thing in 2005 based on the information he had, but added words to the effect of “Dale’s [Rep. Dale Kildee] a nice guy, but he’s a Democrat, and I was afraid it would be blown out of proportion.”<sup>213</sup>

**F. Continuing Press Interest; Rep. Alexander Briefs Majority Leader  
Boehner and Rep. Reynolds; Majority Leader Boehner and Rep. Reynolds  
Reportedly Brief Speaker Hastert**

Over Memorial Day weekend 2006, Matt Miller, the House Democratic Caucus communications director, who is himself a former page, attended a page reunion in Washington. During the reunion, in a conversation with another former page, he mentioned the Foley e-mails and his frustration that the press had declined to run a story on them. The other former page put him in touch with a writer from *Harper’s Magazine*. The *Harper’s* writer was interested in the story, and soon thereafter, he contacted the offices of both Rep.

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<sup>212</sup> Shimkus Dep. at 12.

<sup>213</sup> Representative Shelley Moore Capito Deposition (hereinafter Capito Dep.) at 21. Rep. Shimkus confirms that he made such a statement to Rep. Capito in October 2006, but he testified that party affiliation was not a factor in his decision in 2005. He ascribes the statement to frustration over the timing of the release of the sexually explicit IMs in late September 2006, just prior to the election. Shimkus Dep. at 100.

Foley and Rep. Alexander. Rep. Foley, as he had done previously with the *St. Petersburg Times*, talked to the reporter directly and attempted to explain away the e-mails.<sup>214</sup> Rep. Alexander's office again responded by contacting the former page's parents to warn of possible press calls, and also to confirm that there had been no more communication from Rep. Foley.<sup>215</sup> Royal Alexander also again contacted Stokke to advise him of the renewed press interest in Rep. Foley's e-mails. On June 1, 2006, Royal Alexander e-mailed Stokke, "I just wanted to give you a heads up that that sensitive matter we discussed about 3 months ago re Rep. Foley is cropping up again. It may be worth a conversation."<sup>216</sup> According to Royal Alexander, Stokke did not respond.<sup>217</sup> Stokke testified that he does not recall receiving the e-mail.<sup>218</sup>

Rep. Alexander decided at that point that he personally needed to bring the matter to the attention of leadership because he "felt like the story was about to break and just need[ed] somebody to know."<sup>219</sup> While on the House floor during a series of votes, Rep. Alexander mentioned the matter to Majority Leader Boehner, stating in substance, "I don't know how familiar you are with the e-mail story about the page from Louisiana and Congressman Foley. But we have gotten another inquiry from a different media source about these e-mails. And I wanted you to be aware that they are contacting the office again." According to Rep. Alexander, Majority Leader Boehner responded with words to the effect of "Okay, we will handle it."<sup>220</sup> Majority Leader Boehner confirmed that this conversation occurred. His recollection of the conversation was substantially the same, although he recalls that his response to Rep. Alexander was "thanks for the info."<sup>221</sup> Majority Leader Boehner recalls that his conversation with Rep. Alexander lasted for "less than a minute."<sup>222</sup> According to both Rep. Alexander and Rep. Tom Reynolds, Rep. Alexander also similarly briefed Rep. Reynolds during the same time period in a short

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<sup>214</sup> Nicholson Dep. at 36.

<sup>215</sup> Rep. Alexander Dep. at 41-42; Mother of Former Page Dep. at 35-38.

<sup>216</sup> Exhibit 9.

<sup>217</sup> Royal Alexander Dep. at 79-81.

<sup>218</sup> Stokke Dep. at 106-08.

<sup>219</sup> Rep. Alexander Dep. at 48-50, 72.

<sup>220</sup> Rep. Alexander Dep. at 49.

<sup>221</sup> Majority Leader John Boehner Deposition (hereinafter Boehner Dep.) at 6-8.

<sup>222</sup> Boehner Dep. at 9.

conversation on the House floor.<sup>223</sup> Rep. Alexander did not show the e-mails to either Majority Leader Boehner or Rep. Reynolds.

Majority Leader Boehner testified that within half an hour of being briefed by Rep. Alexander, he believes that he briefed Speaker Hastert on the matter on the House floor, and that Speaker Hastert said that the matter “has been taken care of.” Majority Leader Boehner testified as follows:

Q Now, you say later on -- how soon after [talking to Alexander] did you speak with the Speaker?

A You know, some -- I would say sometime within a half-hour, an hour, as best I can recall. Best I can recall, I believe that I found the Speaker on the floor and told him what Alexander had told me, and I believe that he said to me it had been taken care of.

Q Now, when you had heard this news from Mr. Alexander, and the conversation concluded, I mean, did you make a decision to talk to the Speaker, or how you were going to handle it?

A No. No. The Speaker and I have conversations all day every day, and I routinely pass information to him, and he routinely passes information to me.

Q So to the best of your recollection, what of this information that was told from Mr. Alexander did you communicate to the Speaker?

A As best I can recall that Alexander talked to me, that there had been some contact between Foley and a former page, and that the parents didn’t want it pursued. I don’t know whether I told him that Reynolds told me he had talked to -- or Alexander -- I don’t know whether I told him that Alexander had told Reynolds. I may have. I don’t know.

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<sup>223</sup> There was a difference in testimony regarding this sequence of events. Rep. Alexander believes that he first briefed Majority Leader Boehner, and then briefed Rep. Reynolds later that same day after Rep. Reynolds came to him on the floor and said that he had been told about the e-mails by Leader Boehner. Alexander Dep. at 50-51. Rep. Reynolds testified that Leader Boehner advised him on the House floor that Rep. Alexander would be coming to see him on an unspecified matter, and that Rep. Alexander eventually approached him as long as a week later. Representative Tom Reynolds Deposition (hereinafter Reynolds Dep.) at 15-16.

Q So the Speaker communicated that it had been taken care of?

A Yes, to the best I can recall.

Q Can you testify that those were his exact words, or you are characterizing?

A No. I believe that those were the exact words.

Q What did you take that to mean?

A That it had been taken care of. The Speaker -- the Speaker is a friend of mine. We've known each other a long time. We've worked close together. We work well together, and this is something -- an issue in his purview, and he tells me it has been taken care of, I believe it has been taken care of.<sup>224</sup>

The conversation was apparently brief. Paula Nowakowski, Majority Leader Boehner's chief of staff, testified that Boehner briefed her on what he had heard from Rep. Alexander, but that Majority Leader Boehner did not mention that he had briefed the Speaker.<sup>225</sup>

Speaker Hastert testified that he does not recall this conversation. "What I'm saying is I don't remember having that conversation with Boehner on the House floor; and probably the House floor would not be the place to have that conversation, in my point of view."<sup>226</sup>

Similarly, Rep. Reynolds testified that "more than a day" after he was briefed by Alexander, he also informed Speaker Hastert, probably in Speaker Hastert's office, of the information he had learned from Rep. Alexander. Specifically, Rep. Reynolds testified that he told Speaker Hastert that he had had a conversation with Rep. Alexander "that indicated that he had a page that received some overly friendly e-mails from Mark Foley. But that the parents were aware, and didn't want anything further to happen or to be dealt with on the issue."<sup>227</sup> According to Rep. Reynolds, the Foley e-mails were just one briefing item out of many at that meeting, and Speaker Hastert did not comment on the matter.<sup>228</sup> A Reynolds

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<sup>224</sup> Boehner Dep. at 11-13.

<sup>225</sup> Paula Nowakowski Deposition (hereinafter Nowakowski Dep.) at 9-11, 17.

<sup>226</sup> Hastert Dep. at 8, 54.

<sup>227</sup> Reynolds Dep. at 18.

<sup>228</sup> Reynolds Dep. at 18-19.

aide, Sally Vastola, recalls a brief discussion in a car outside the Capitol during this time period in which Rep. Reynolds, who was late for an appearance at a campaign event, explained to her that he was late because he had to go see the Speaker about a conversation he had with Rep. Alexander regarding Rep. Foley. Rep. Reynolds did not elaborate on the content of that conversation.<sup>229</sup>

Speaker Hastert testified that he does not recall any conversation with Rep. Reynolds regarding the Foley e-mails.<sup>230</sup> Speaker Hastert testified that it is his practice to make notes regarding significant matters brought to his attention, particularly if action is required by his office, and that he does not recall recording the alleged conversations with Majority Leader Boehner and Rep. Reynolds.<sup>231</sup>

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<sup>229</sup> Sally Vastola Deposition (hereinafter Vastola Dep.) at 15. Rep. Reynolds does not recall mentioning his meeting with the Speaker to Vastola. Reynolds Dep. at 20-21.

<sup>230</sup> Hastert Dep. at 7. The Speaker's office released a document entitled "Internal Review of Contacts with the Office of the Speaker Regarding the Congressman Mark Foley Matter" on September 30, 2006, which is discussed later in this report. The "Internal Review" states in part, "During a meeting with the Speaker [Rep. Reynolds] says he noted the issue which had been raised by Alexander and told the Speaker than an investigation was conducted by the Clerk of the House and Shimkus." Reynolds denies that he advised the Speaker regarding any investigation or other resolution of the matter. According to Rep. Reynolds, at the time he notified the Speaker of the matter, he had "no idea there was an investigation done by Mr. Shimkus or the Clerk of the House." Reynolds Dep. at 58-59.

<sup>231</sup> On this point, the Speaker testified as follows:

A I stated that I don't recollect that conversation taking place. I carry these little note cards with me all the time. Usually if I have something, I take it down. I wrote it down. I have never done that.

Q With respect to Mr. Boehner or Mr. Reynolds' conversation?

A That's correct.

Q What types of matters do you take down on your note cards?

A If a Member asks me to do something, I write it down. More than two things, I can't remember it anymore.

Q What if a Member just passes on information or keeps you informed or keeps you in the loop, would you write that down on your note cards?

A Depends on what the information is. I'm not trying to be coy, it just depends what it is.

Q So if it requires you to take an affirmative step or to do something --

A If they are asking me to do something or take an action or provide a resource, I would -- I would make note of it on the floor.

Hastert Dep. at 8-9.

Stokke testified that in May 2006, Rep. Reynolds also raised the Foley issue with him as a potential political problem during the course of a discussion on political matters in Stokke's office. Stokke told Rep. Reynolds that he was aware of the issue and that he thought that it had been "handled."<sup>232</sup> Stokke described the exchange as follows:

I believe he [Rep. Reynolds] raised it as part of a discussion of a number of Member[s]; and the issue there was, as I recall it, he was going to run again, Mr. Foley, but there has been this issue raised about Mr. Foley. And my recollection is that I indicated that we were aware of this issue and that this issue had been dealt with. Not in a press sense, because I don't know where the press state was, but in a solve-the-problem sense.<sup>233</sup>

Ultimately, as with the *Miami Herald* and the *St. Petersburg Times*, *Harper's* declined to run a story on the e-mails because they "did not have absolute proof that Foley was, as one editor put it, 'anything but creepy.'"<sup>234</sup> Nevertheless, the e-mails continued to circulate throughout the spring and summer of 2006. According to the *Harper's* reporter, he was disappointed with the decision not to publish, and he "passed along the emails and related materials to several people who were in a position to share them with other media outlets," and he "subsequently learned that other people had the same information and were also contacting reporters."<sup>235</sup> Jason Kello, Rep. Foley's communications director, testified that by the summer of 2006, his assumption was that every reporter he dealt with had the e-mails, and he repeatedly raised the issue with Liz Nicholson and Rep. Foley in an effort to develop a plan to respond to the issue. In his view, "it was not an *if* these e-mails came out, that it was more along the lines of *when* these e-mails came out."<sup>236</sup> According to Nicholson, in July of 2006, the Foley campaign received word that Foley's Democratic

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<sup>232</sup> Stokke Dep. at 94-102.

<sup>233</sup> Stokke Dep. at 98. Nicholson testified that beginning in early 2006, Rep. Foley began to express serious reservations about running for reelection, and that she had difficulty getting him to focus on what appeared to be a significant election challenge. Nicholson testified that Rep. Foley was "down" and was a "whole different guy" for a long period, and it was not until early summer that he began to get energized about the election. Nicholson Dep. at 42-45.

<sup>234</sup> Ken Silverstein, "Republicans Want to Turn Over a New Page," *Harper's Magazine* online, Oct. 10, 2006.

<sup>235</sup> Ken Silverstein, "Republicans Want to Turn Over a New Page," *Harper's Magazine* online, Oct. 10, 2006.

<sup>236</sup> Jason Kello Interview Transcript (hereinafter Kello Int. Tr.) at 19-20 (emphases added).

opponent, Tim Mahoney, intended to use the e-mails in his campaign.<sup>237</sup> According to an organization called Citizens for Responsibility and Ethics in Washington (“CREW”), it received the e-mails from an undisclosed source on July 21, 2006, and forwarded them to the FBI the same day. The FBI apparently declined to pursue the matter at that time.<sup>238</sup>

### **G. The E-Mails Are Published and the Instant Messages Surface**

On Sunday, September 24, 2006, the e-mails were posted on an apparently recently established weblog, [stopsexpredators.blogspot.com](http://stopsexpredators.blogspot.com). The postings included the comment, “This is absolutely amazing. I just received these emails. They were sent by Congressman Mark Foley to a 16-year-old male page. I have removed his name to protect his identity. But how shocking is this? I can’t believe this was emailed to me? There must be even more out there. Email me at [stopsexpredators@gmail.com](mailto:stopsexpredators@gmail.com) and let me know what we should do!!!! Something must be done!!!!”<sup>239</sup> Another weblog, [wonkette.com](http://wonkette.com), subsequently linked to the [stopsexpredators](http://stopsexpredators.blogspot.com) weblog on September 27, 2006, although [wonkette.com](http://wonkette.com) was skeptical that the e-mails were real.<sup>240</sup>

The next day, Monday, September 25, Rep. Foley and his staff had a conference call to discuss the e-mails. During the call, at least two staff members pressed Rep. Foley on whether there was “anything else out there,” and Rep. Foley told them that there was not. The conclusion after the meeting was to wait and see if anything else happened. As the

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<sup>237</sup> Nicholson Dep. at 40-41.

<sup>238</sup> The Justice Department has reportedly stated, “The e-mails, while inappropriate, did not contain a criminal predicate to allow the FBI to move forward with an investigation.” Dan Eggen, “Watchdog Group Disputes FBI’s Claims on E-Mails,” *Washington Post*, Oct. 6, 2006.

<sup>239</sup> Exhibit 10. Subsequent press reports identified the blogger as former Democratic congressional aide Lane Hudson. Hudson reportedly provided the e-mails to the *Los Angeles Times* in July 2006 and later established the blog after being frustrated that the *Times* had not published an article. Hudson would not identify the source of the e-mails but said that they “weren’t hard to come by.” Hudson was then employed by the Human Rights Campaign, but he was later terminated for violating the organization’s policy against using its computers for blogging. Noam Levey, “Anti-Foley Blogger Speaks Out,” *Los Angeles Times*, Nov. 10, 2006.

<sup>240</sup> Exhibit 11. (“This is one in a series of emails some anonymous and semi-literate blogger claims are from Representative Mark Foley (R-FL) to a 16-year-old male House page. Oh, of course they’re not real. But let’s all pretend, ok? ‘Cause it’s better than another damn plagiarism ‘scandal’”).

week went on, Rep. Foley's office continued to get inquiries from a number of media outlets and others, including the *Washington Post* and ABC news.<sup>241</sup>

On Thursday, September 28, 2006, Rhonda Schwartz of ABC News contacted Foley's chief of staff, Liz Nicholson, regarding the e-mails, and Nicholson commented at length on the record.<sup>242</sup> Later that day, ABC News posted a story on the e-mails on the Brian Ross page of its website. Nicholson was quoted in the article as saying that Rep. Foley's office believed that the e-mail exchange was totally innocent, and that the e-mails were released by the opposition as part of an "ugly smear campaign." Nicholson also was reported to have said that Rep. Foley's office "believed the e-mail exchange began when the page asked Rep. Foley for a recommendation." The article also reported that "Foley's office says it is their policy to keep pictures of former interns and anyone who may ask for a recommendation on file so they can remember them."<sup>243</sup>

The ABC News report came to the attention of Stokke in the Speaker's office, who testified that he recalled getting an e-mail from Royal Alexander telling him that the issue regarding the e-mails had "come up again."<sup>244</sup> Stokke thought that the issue had previously been "raised and addressed," and that it was now a "political/media" issue, and said that he did not discuss the matter with anyone in the Speaker's office that day.<sup>245</sup> Van Der Meid also recalls hearing about the e-mails on September 28, and understanding that these were the same e-mails that he had known about earlier.<sup>246</sup> He does not recall talking to anyone about the e-mails on that day.<sup>247</sup>

On that same date, Rep. Foley authorized Bradley Schreiber, an attorney on his congressional staff, to put together a legal team for the purpose of considering whether to

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<sup>241</sup> Kello Int. Tr. at 31-33.

<sup>242</sup> Nicholson Dep. at 59-60. Nicholson became Foley's chief of staff in May 2005. Nicholson Dep. at 6.

<sup>243</sup> Rhonda Schwartz and Maddy Sauer, "Sixteen-Year Old Who Worked as Capitol Hill Page Concerned About E-mail Exchange with Congressman." The post indicates that it was posted at 3:06 p.m. on September 28, 2006. Exhibit 12.

<sup>244</sup> Stokke Dep. at 115-16.

<sup>245</sup> Stokke Dep. at 121.

<sup>246</sup> Van Der Meid Dep. at 155-56.

<sup>247</sup> Van Der Meid Dep. at 156-58.



file a defamation lawsuit against ABC News. “I believe, given the e-mails that we had reviewed and the way that the story was written, that it made an inference that [Rep. Foley] was a sexual predator. I suggested to [Rep. Foley] that that would affect not only his campaign, but would -- not only affect his campaign, but as an individual and as a sitting Member of Congress, and that we consider filing a lawsuit against ABC News.”<sup>248</sup> Discussion of a possible defamation lawsuit continued within Rep. Foley’s office on September 29, 2006. On that date, Schreiber contacted Elliot Berke, counsel to Speaker Hastert, to consult with him on the merits of filing such a lawsuit.<sup>249</sup>

ABC News included a “tip line” on its website, and on the evening of September 28 a former page (“Former Page X”) contacted ABC News and reported that he had information regarding Rep. Foley’s interaction with former pages.<sup>250</sup> In 2003, Former Page X had received copies of multiple sexually explicit IM conversations from Rep. Foley to two other former pages. He received the IMs from one of the recipient former pages with whom he had kept in contact since they were pages in 2001 and 2002.<sup>251</sup> Former Page X did not forward the IMs to anyone or take any other action when he first received them in 2003, but he stored the IMs on his computer where they remained until September 28, 2006.<sup>252</sup> Former Page X testified that he did not consider bringing the IMs to the attention of the page program at the time he received copies of them, explaining as follows:

Personally, you know, it’s I guess up to the victim to, you know, deal with that kind of stuff. You know, I didn’t -- I guess didn’t feel it was my responsibility. You know, it was up to [the recipients] to bring it forward if they wanted to.<sup>253</sup>

On the evening of September 28, Former Page X was alerted to the ABC story by another former page, and he remembered the IMs that he had received in 2003. He was able to recover them from his computer, and he forwarded them to the former page who had

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<sup>248</sup> Bradley Schreiber Interview Transcript (hereinafter Schreiber Int. Tr.) at 29.

<sup>249</sup> Schreiber Int. Tr. at 28-33.

<sup>250</sup> Former Page X Int. Tr. at 36.

<sup>251</sup> Former Page X Int. Tr. at 13-19.

<sup>252</sup> Former Page X Int. Tr. at 26-27.

<sup>253</sup> Former Page X Int. Tr. at 60-61.

alerted him to the ABC story. The two of them discussed the IMs and what they should do, and they concluded that they should contact ABC News. Former Page X contacted ABC through the tip line, and he forwarded the IMs on the evening of September 28 and the morning of September 29.<sup>254</sup> Former Page X believes that the other page also provided the IMs to ABC independently.<sup>255</sup>

Prior to September 28 and 29, 2006 the IMs were apparently known to a number of pages and close friends of the IM recipients. According to Former Page X, after he had provided the IMs to ABC News, he and the IM recipient discussed the identity of the ABC News source. Former Page X did not admit that he was the source, and the IM recipient told Former Page X that he had shared them with as many as 12 people.<sup>256</sup> In addition, according to Former Page X and another former page, the IMs were a topic of discussion during a February 2003 page reunion in Washington.

The Investigative Subcommittee uncovered no evidence that the IMs were provided to, or were possessed by, any House Member, officer or employee, the press, or any political organization prior to September 28 and 29, 2006.

## **H. Rep. Foley Resigns**

On the morning of September 29, ABC News called Rep. Foley's communications director and said that ABC had 36 pages of sexually explicit IMs purportedly written by Rep. Foley to a former page.<sup>257</sup> The communications director called Fordham, who, though no longer Rep. Foley's chief of staff, was still a Foley campaign advisor, and was then at Rep. Foley's Capitol Hill home for lunch, along with Rep. Foley and his current chief of staff, Nicholson. The communications director described the phone call from ABC.<sup>258</sup>

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<sup>254</sup> Former Page X Int. Tr. at 35-40. Former Page X provided the Investigative Subcommittee with copies of all of the e-mails and instant messages he had in his possession, which included the IMs published by ABC News, as well as many additional IMs with similar content. A copy of the material provided to the Committee is included as Exhibit 13, with personal information regarding the recipient page redacted.

<sup>255</sup> Former Page X Int. Tr. at 38, 43-44.

<sup>256</sup> Former Page X Int. Tr. at 47-49.

<sup>257</sup> Kello Int. Tr. at 40-41.

<sup>258</sup> Fordham Dep. at 58.

Fordham then asked Rep. Foley whether the IMs were authentic, and Foley responded, “Probably.”<sup>259</sup> Fordham told Rep. Foley that the IMs could not be defended and suggested to Rep. Foley that he resign.<sup>260</sup>

Fordham then walked from Rep. Foley’s house to the offices of the National Republican Congressional Committee (“NRCC”), where a number of people, including Fordham, Vastola, Rep. Reynolds, and a number of other NRCC staff gathered to discuss the matter.<sup>261</sup> Speaker Hastert and Stokke were at the NRCC on another matter, and they were brought into the meeting as well.<sup>262</sup> Some of those present at the meeting recall that statements were made that Rep. Foley intended to resign, while others recall that the meeting participants concluded that Rep. Foley had to resign.<sup>263</sup> In any event, there was general agreement that Rep. Foley needed to resign immediately, and the NRCC staff drafted a one-sentence letter of resignation. Fordham left the NRCC with the proposed letter of resignation, and went back to Rep. Foley’s house by way of Rep. Foley’s office in the Cannon House Office Building. Rep. Foley signed the letter of resignation and, in anticipation of a press onslaught, left town.<sup>264</sup>

ABC News ran two stories later that day regarding the IMs and Foley’s resignation.<sup>265</sup> Excerpts from the IMs were posted on the ABC website with the second story.

### **I. Events After Rep. Foley’s Resignation**

As September 29 progressed, word of Rep. Foley’s resignation filtered through the Capitol. Rep. Shimkus was summoned to the Speaker’s office mid-afternoon just

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<sup>259</sup> Fordham Dep. at 60.

<sup>260</sup> Fordham Dep. at 60.

<sup>261</sup> Fordham Dep. at 61.

<sup>262</sup> Fordham Dep. at 62; Hastert Dep. at 10-12.

<sup>263</sup> Hastert Dep. at 11; Vastola Dep. at 40.

<sup>264</sup> Fordham Dep. at 67.

<sup>265</sup> Brian Ross and Maddy Sauer, “Foley Resigns Over Sexually Explicit Messages to Minors” The post indicates that it was posted at 3:02 p.m. on September 29, 2006. Exhibit 14; Brian Ross, Rhonda Schwartz, and Maddy Sauer, “Exclusive: The Sexually Explicit Internet Messages That Led to Fla. Rep. Foley’s Resignation.” The post indicates that it was posted at 5:59 p.m. on September 29, 2006. Exhibit 15.

prior to a scheduled enrollment ceremony where Rep. Foley's sudden resignation was being discussed. Speaker Hastert let Rep. Shimkus know that he would invoke Rep. Shimkus' name if asked about the Foley matter by the press after the ceremony, and suggested that perhaps the Page Board should initiate an investigation.<sup>266</sup> Rep. Shimkus was initially "clueless," because this was the first he had heard about Rep. Foley's resignation and, unaware of the IMs, he could not believe that Rep. Foley would resign over the e-mails that he had known about a year earlier.<sup>267</sup>

Later that day, Rep. Shimkus went to see Rep. Dale Kildee, who was a member of the Page Board, and for the first time disclosed to Rep. Kildee his knowledge of the e-mails in November 2005 and his confrontation with Rep. Foley.<sup>268</sup> Rep. Shimkus then had a similar meeting with Rep. Shelley Moore Capito, who was also unaware of the events of November 2005.<sup>269</sup> A Page Board meeting was held later that day with all of the members except for the emeritus member, Donald Anderson.<sup>270</sup> The Board briefly discussed and dismissed the possibility of an investigation, as they did not believe that they had investigative authority. After the meeting, Rep. Shimkus, Rep. Capito, and the current Clerk of the House, Karen Haas, visited the page dorm to reassure the current pages that they were committed to their safety.<sup>271</sup>

Sometime on the evening of September 29, Majority Leader Boehner told a *Washington Post* reporter that Rep. Alexander had approached him regarding the Foley e-mails during the spring of 2006, and that he, in turn, had informed Speaker Hastert of the situation and that Speaker Hastert had said that the matter "had been taken care of."<sup>272</sup> Palmer later contacted Nowakowski regarding the perceived inconsistency between Majority Leader Boehner's and Speaker Hastert's statements, as Speaker Hastert had stated that he had no knowledge regarding the e-mails.<sup>273</sup> Nowakowski, along with press

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<sup>266</sup> Shimkus Dep. at 25.

<sup>267</sup> Shimkus Dep. at 25.

<sup>268</sup> Shimkus Dep. at 39-40.

<sup>269</sup> Shimkus Dep. at 44.

<sup>270</sup> Capito Dep. at 9-10; Kildee Dep. at 8-9; McNamara Int. Sum.

<sup>271</sup> Capito Dep. at 26.

<sup>272</sup> Boehner Dep. at 16.

<sup>273</sup> Palmer Dep. at 78-80.

secretary Kevin Madden, asked Majority Leader Boehner whether he was absolutely sure that he spoke with Speaker Hastert on the matter. Majority Leader Boehner explained to them that although he believed that he had spoken with Speaker Hastert, he could not be certain.<sup>274</sup> Madden and Majority Leader Boehner subsequently contacted the *Post* reporter to relate Majority Leader Boehner's position.<sup>275</sup> In his testimony to the Subcommittee, Majority Leader Boehner explained that his recollection of receiving a response from the Speaker makes him believe that he did have a conversation with Speaker Hastert: "And that's why, while I can't be certain that I talked to him or where I talked to him, I do believe that I talked to him, because I remember the response."<sup>276</sup>

Speaker Hastert departed for Illinois by air with Stokke on the evening of the September 29. After the Speaker had departed, Minority Leader Pelosi introduced H. Res. 1065, a privileged resolution directing that the Committee on Standards "immediately appoint an investigative subcommittee . . . to fully and expeditiously determine the facts connected with Representative Foley's conduct and the response thereto." The resolution included the language, "Whereas Rep. Alexander has said 'We also notified the House leadership that there might be a potential problem.'"<sup>277</sup> The resolution was referred to the Committee on Standards by vote of the full House.

Sometime before midnight, a meeting was held in Majority Leader Boehner's office to talk about the matter.<sup>278</sup> Among those present, at least at some point, were Majority Leader Boehner, Rep. Shimkus, Rep. Pryce, Rep. Alexander, Rep. Cantor, Rep. Blunt, Palmer, and Nowakowski. Since the meeting was convened after the referral to the Committee on Standards, some participants questioned whether it was appropriate to conduct the meeting.<sup>279</sup> Rep. Reynolds chose not to attend the meeting on the advice of

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<sup>274</sup> Nowakowski Dep. at 16. Nowakowski also testified that Majority Leader Boehner later told her that he was "99%" certain he had talked to the Speaker. Nowakowski Dep. at 49.

<sup>275</sup> Boehner Dep. at 17.

<sup>276</sup> Boehner Dep. at 31.

<sup>277</sup> Exhibit 1.

<sup>278</sup> Palmer Dep. at 91.

<sup>279</sup> Nowakowski Dep. at 29.

his counsel, Randy Evans, after suspecting that Rep. Alexander and others who had prior knowledge of the Foley matter might be in attendance.<sup>280</sup> Rep. Reynolds testified:

I'm not inclined to go in and collaborate or memorialize anything that would deal with this based on the fact that, previous to this, we had voted to send it to the Ethics Committee.

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I made a decision not to go, based on a discussion with Randy Evans' counsel [sic], because I had previously voted to engage the ethics committee to review this. Not being a lawyer, there are not many things I know about the legal side of this, but I do know that discussions of recollecting anything is not preferred.<sup>281</sup>

Nevertheless, the conclusion was reached by others involved that the meeting should proceed in the interest of being able to answer press calls regarding the matter, and, according to Palmer, Majority Leader Boehner opened the meeting by explaining that the meeting was not intended to influence recollections.<sup>282</sup> During the meeting, Rep. Alexander explained what he knew about the e-mails and the family's wishes. He also clarified that he had not talked to the Speaker about the e-mails and apologized that a previous statement that he had made had left that impression.<sup>283</sup> Rep. Shimkus described his confrontation with Rep. Foley the previous November.<sup>284</sup> The group discussed the difference between the e-mails and the IMs, and Majority Leader Boehner went around the room asking whether anyone had known about the IMs, and it was stressed that any statements on the matter should be precise in differentiating between the e-mails and the IMs.<sup>285</sup>

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<sup>280</sup> Reynolds Dep. at 45-50, 84.

<sup>281</sup> Reynolds Dep. at 82, 86.

<sup>282</sup> Palmer Dep. at 93. Nowakowski recalls that "we were trying to be very careful that we not get ourselves in the issue -- the situation where, you know, we might be seen as manipulating someone's testimony or that kind of thing." Nowakowski Dep. at 29.

<sup>283</sup> Palmer Dep. at 95-96. Rep. Alexander recalls that this clarification was made to the press outside the meeting. Rep. Alexander Dep. at 59.

<sup>284</sup> Palmer Dep. at 96.

<sup>285</sup> Nowakowski Dep. at 29-30.

At about two or three a.m. on September 30, Palmer, upon returning to his office, was reportedly told by one of the Speaker's attorneys, Elliott Berke, that Palmer should talk to Tim Kennedy.<sup>286</sup> Palmer testified that in speaking with Kennedy, he first learned that Stokke had been made aware of the e-mails in November 2005, and had referred the matter to the Clerk.<sup>287</sup> Palmer directed Berke to conduct an internal review of the matter with a view towards issuing a statement.

During the day of September 30, Elliott Berke and Randy Evans interviewed Kennedy, Stokke, Van Der Meid, and Karen Haas. According to Haas, she had been called by Van Der Meid who said "that he was trying to put together a timeline, you know, kind of what had happened, and so if there was anything that, you know, I could provide, that would be helpful, either, you know, past conversations I had with Jeff or anything else that, you know, he would appreciate it."<sup>288</sup> She called Jeff Trandahl and later that day reported the results of that conversation to Berke and others in the Speaker's office.

Palmer drafted a report based on input from Berke and Evans. Before the statement was released, Palmer read the report during a conference call among leadership staff, including Boehner's chief of staff, Paula Nowakowski. The Speaker's office released the "Internal Review of Contacts with the Office of the Speaker Regarding the Congressman Mark Foley Matter" ("Internal Review") on September 30, characterizing the release as a "preliminary report."<sup>289</sup>

On October 5, 2006, the Committee on Standards of Official Conduct met and passed the resolution creating the Investigative Subcommittee.

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<sup>286</sup> Palmer Dep. at 112.

<sup>287</sup> Palmer Dep. at 113.

<sup>288</sup> Haas Int. Tr. at 66.

<sup>289</sup> A copy of the "Internal Review" is attached as Exhibit 16.

## **V. FINDINGS AND RECOMMENDATIONS**

### **A. Summary of Findings**

The Investigative Subcommittee was established to conduct a broad inquiry into whether Members, officers, and employees of the House of Representatives acted properly with respect to any knowledge or information they had regarding improper conduct involving Members and pages or former pages. At the time the Investigative Subcommittee was established, in the week after Rep. Foley's resignation, little was known about the facts regarding Rep. Foley's conduct (or the conduct of any other Member) with pages or former pages, who knew about any aspects of that conduct, and what they did with that knowledge. The facts that were known raised important issues regarding the safety and well-being of congressional pages, and caused sufficient concern about the oversight and management of the page program that the Committee concluded an immediate investigation was necessary.

As a result of its investigation, the Investigative Subcommittee concludes that the evidence available to it does not establish a basis to recommend additional proceedings to determine whether any particular House Member, officer or employee subject to the jurisdiction of the Committee on Standards of Official Conduct violated House rules or standards of conduct. The Investigative Subcommittee therefore does not recommend further investigative or disciplinary proceedings against any Member, officer or employee.

The Investigative Subcommittee's conclusion that the evidence does not support further investigative or disciplinary proceedings should not be read as a conclusion that the Members, officers and employees whose conduct was reviewed acted properly at all times in connection with their knowledge or handling of information concerning improper conduct involving Members and current and former House pages. To the contrary, the Investigative Subcommittee finds a significant number of instances where



Members, officers or employees failed to exercise appropriate diligence and oversight, or should have exercised greater diligence and oversight, regarding issues arising from the interaction between former Rep. Mark Foley and current or former House pages. But the requirement that Members and staff act at all times in a manner that reflects creditably on the House does not mean that every error in judgment or failure to exercise appropriate oversight and sufficient diligence establishes a violation of House Rule 23. The Subcommittee is mindful of the ease with which decisions and conduct can be questioned in hindsight with the benefit of later-discovered facts. The danger of hindsight is particularly significant in this matter, given the nature of the instant messages that never surfaced until late September 2006 and led to Rep. Foley's resignation. The Subcommittee has reviewed the conduct of the various individuals involved in this matter based on the information they had available to them at the time.

As a general matter, the Subcommittee observed a disconcerting unwillingness to take responsibility for resolving issues regarding Rep. Foley's conduct. Rather than addressing the issues fully, some witnesses did far too little, while attempting to pass the responsibility for acting to others. Some relied on unreasonably fine distinctions regarding their defined responsibilities. Almost no one followed up adequately on the limited actions they did take.

With respect to the e-mails to the former Alexander page, a number of Members, officers and staff had opportunities to inquire further into Rep. Foley's conduct, to elevate the issues raised by the e-mails to more senior Members or staff, or to otherwise take steps consistent with knowledge of inappropriate e-mails from a middle-aged Member of Congress to a 16-year-old boy one month removed from the House page program. While some did fulfill their responsibilities, the Investigative Subcommittee finds that too many exhibited insufficient diligence or willingness to take the steps necessary to ensure that the matter was being appropriately handled. No one in the House who was involved in addressing Rep. Foley's conduct, other than Rep. Alexander and his staff, actually saw the e-mails. Several people were told about the e-mails and were asked to take action regarding them, including confronting Rep. Foley and telling

him to stop communicating with the former page, but none of those people saw – or insisted on seeing – the e-mails prior to taking such action. A number of witnesses testified that they were not given copies of the e-mails because of the family's request for privacy, but all of those witnesses knew at the time that a newspaper already had the e-mails. Almost no one followed up to make sure that the action they had taken had been successful.

The Investigative Subcommittee cannot determine conclusively the motivation for those who failed to fulfill their responsibilities. However, the Investigative Subcommittee identified several factors that may have been in play. Some may have been concerned that raising the issue too aggressively might have risked exposing Rep. Foley's homosexuality, which could have adversely affected him both personally and politically. There is some evidence that political considerations played a role in decisions that were made by persons in both parties. The wishes of the page's family for privacy could have also provided a convenient justification for failing to pursue the matter more aggressively for those who were already so inclined.

Some or all of these factors (as well as others) may have played a role in decisions that were made about how this matter should have been handled, but in the Investigative Subcommittee's view none of these factors mitigated the need for those involved to learn all the relevant facts and communicate those facts candidly and freely to those with authority to address the issues raised by the e-mails.

The Investigative Subcommittee did not address whether the various matters involving former Rep. Foley would necessarily have been resolved differently had greater diligence or oversight been exercised, including whether disclosure of the instant messages that led to Rep. Foley's resignation would have happened sooner, later, or not at all. Reaching such conclusions would require constructing a chain of uncertain and unpredictable events, and would therefore involve inappropriate speculation. So, for example, even had one or more of the witnesses discussed below successfully demanded to see the actual e-mails sent to the former Alexander page prior to or after confronting

Rep. Foley in November 2005, the Investigative Subcommittee cannot conclude that the outcome of that meeting with Rep. Foley would have been different. The inability to predict different outcomes, however, does not prevent the Investigative Subcommittee from reaching conclusions regarding the conduct that was the subject of the inquiry.

As described elsewhere in this Report, Rep. Foley resigned from the House on September 29, 2006, after he learned that the media had copies of certain sexually graphic instant messages he had sent to one or more former House pages. The disclosure of the instant messages reportedly triggered a number of state and federal criminal inquiries. The Committee lost jurisdiction over Rep. Foley upon his resignation, and through his counsel Rep. Foley refused to testify before the Subcommittee, citing the pending criminal investigations against him and asserting his constitutional right to refuse to testify against himself. As a result, the Investigative Subcommittee did not seek to investigate fully all instances in which former Rep. Foley may have had improper communications with pages or former pages, or to determine the complete facts and circumstances surrounding the instant messages that were the cause of his resignation. Based on the evidence it did collect, however, the Investigative Subcommittee unanimously concludes that had Rep. Foley not resigned there would have been a substantial basis to find a violation by Rep. Foley of House rules or standards of conduct.

The evidence before the Subcommittee establishes that Rep. Foley on more than one occasion established contact with House pages before the end of their page service and secured e-mail addresses or other contact information for the pages. That evidence also suggests that at or after their departure from the House, Rep. Foley began contacting some former pages with increasingly familiar communications. As the former pages responded, the messages from Rep. Foley at times turned to sexually graphic topics, including messages that could be read as sexual solicitation. Although the recipients were former pages by the time the sexually graphic messages were sent, the fact that the initial contact began when the young men were pages suggests that Rep. Foley may have been using the page program to in part at least to identify possible future recipients of graphic communications.

At its core, such conduct is an abuse of power, and an abuse of trust of the pages, their parents or guardians, and the Congress itself. Behavior of this kind cannot be excused or tolerated, as it undermines the integrity of the House. A Member engaging in such conduct violates House Rule 23, Clause 1, which mandates that Members conduct themselves “at all times in a manner that shall reflect creditably on the House.” In the case of former Rep. Foley, a 54-year-old-man who made unwelcome communications with teenage former House pages, the evidence adduced by the Investigative Subcommittee would almost certainly have subjected him to disciplinary proceedings had he not resigned. As described in a report of the Committee in an earlier matter involving the relationship between Members and House Pages:

[T]here is a difference between a 17-year-old page away from home and a 44-year-old Member of the House of Representatives in terms of responsibility, maturity, judgment, and fiduciary obligation. The House has always regarded pages as its wards and has always accepted a special responsibility to them.<sup>290</sup>

In that same report, the Committee emphasized, and this Investigative Subcommittee concurs, “the House does have [ ] a duty to the American people who have a right to expect the highest standards from the House as an institution and from its individual Members,”<sup>291</sup> and “any sexual advance or relationship of any kind involving a Page and a Member, officer or employee potentially entails an element of either preferential treatment or coercion, and hence an abuse of office or position.”<sup>292</sup> The issue before this Investigative Subcommittee is not whether a Member of the House is free to have a consensual relationship with a young person; the issue is the obligation of Members to act appropriately and professionally at all times with House pages who are in

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<sup>290</sup> Investigation Pursuant to House Resolution 12 Concerning Alleged Improper or Illegal Sexual Conduct By Members, Officers, or Employees of the House, H. Rep. 98-297, 98<sup>th</sup> Cong., 1<sup>st</sup> Sess. (July 14, 1983) at 37 (emphasis added).

<sup>291</sup> *Id.* at 37.

<sup>292</sup> *Id.* at 14.

Washington, D.C. for a limited time to attend school and to assist the House with its work, and to whom the House has a “special responsibility.”

Some of the Investigative Subcommittee’s specific factual findings are set forth below, followed in the next sections of this Report by a review of the relevant standards of conduct and the Investigative Subcommittee’s conclusions regarding the application of those standards to its factual findings.

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The Investigative Subcommittee devoted substantial effort to determining whether any House Member, officer or employee was aware of or saw the sexually graphic instant messages possessed by ABC News prior to their publication by ABC News and others following Foley’s resignation on Friday, September 29, 2006. Much of the initial press coverage of this matter did not distinguish between those instant messages and the e-mails sent in 2005 to the former Alexander page, which had been published by ABC News on Thursday, September 28, 2006 after they had been posted on at least one website earlier that week.

The distinction between the e-mails and the instant messages is an important one, because the e-mails do not contain the graphic or explicit sexual content of the instant messages. The Investigative Subcommittee does not conclude, however, that the e-mails sent to the former Alexander page were merely “overly friendly,” as they have often been described both by the few who saw them in 2005 and some who saw them for the first time after Rep. Foley’s resignation. When read carefully and in context, the e-mails reflect inappropriate communications between a middle-aged congressman, through his private e-mail account, and a young male who had just left the employ of the House. The e-mails included references to the “great shape” of another former male page, a question about the age of the page and what he wanted for his birthday (although Rep. Foley had been told by the former page that his birthday was five months away), and a request for a picture, all of which could fairly be read as inappropriately personal and excessively

familiar, and which some could read as implicitly sexual. The Investigative Subcommittee finds no merit to any of the suggested justifications by Rep. Foley or anyone on his staff for the tone or content of the e-mails.

The Investigative Subcommittee finds that the e-mails clearly provided a sufficient basis to at the very least confront Rep. Foley, demand an explanation for both the content of the e-mails and the reason for sending them, insist that Rep. Foley stop such communications with former pages, and make him aware that he could face serious consequences if the conduct did not stop. There is evidence that some of those things were done, although (as discussed more fully below) the Investigative Subcommittee concludes that a number of persons with knowledge of the existence of the e-mails should have done more to learn of both their contents and their context.

However, the content of the instant messages is materially different, and far more reprehensible, and had any House Member, officer or employee known about the instant messages they would have been obligated to do far more than was done in response to the e-mails. The Investigative Subcommittee finds no evidence, based on the testimony before the Subcommittee, that any Member, officer or employee had such knowledge of the instant messages prior to their publication on September 29, 2006. Each of the House Members and employees who testified that they were aware of the e-mail messages prior to September 28, 2006, testified that they were unaware of the instant messages prior to September 29, 2006, and the Subcommittee received no evidence contradicting that testimony. The instant messages were known to a number of former pages well before that date, but none of the pages that the Investigative Subcommittee contacted who had known of the instant messages stated that they had disclosed their existence to any House Member, officer, or employee. The instant messages were published by ABC News within 24 hours after ABC News had been given copies of the instant messages by a former page.

The Investigative Subcommittee finds that a number of House Members, officers, staff and others, including several newspapers and other media, were aware of the e-mails

from former Rep. Foley to the former Alexander page before those e-mails were published by ABC News on September 28, 2006. Those in the House who were made aware of the e-mails included House Speaker Dennis Hastert and several members of his staff; Majority Leader John Boehner; Rep. Tom Reynolds; Rep. Rodney Alexander and several members of his staff; Rep. John Shimkus; House Clerk Jeff Trandahl and his deputy; and Rep. Foley and his chief of staff Liz Nicholson as well as his former chief of staff Kirk Fordham. The communications directors for both the House Democratic Caucus and the Democratic Congressional Campaign Committee also had copies of the e-mails in the fall of 2005.

The Investigative Subcommittee finds that persons and organizations outside the House who were aware of the e-mails before their publication in September 2006 includes a friend of the Alexander staff member who forwarded the e-mails, as well as two people to whom she, in turn, forwarded the e-mails; multiple media organizations who received the e-mails from Matt Miller, the House Democratic Caucus staff member who had received the forwarded e-mails, including the *St. Petersburg Times*, the *Miami Herald*, *Roll Call*, *Harper's Magazine* and possibly others; and reportedly at least one public interest group which claims to have forwarded them to the FBI. At least some of these persons or organizations had the e-mails from as early as November 2005, but none chose to publish the e-mails.

Several Members and staff were also aware of other conduct by Rep. Foley regarding pages or former pages, including concerns raised by former Clerk Jeff Trandahl and former Foley chief of staff Kirk Fordham about Foley's close interaction with pages. Those concerns were raised directly with Rep. Foley on multiple occasions, and were also brought to the attention of at least two persons in the Office of the Speaker, chief of staff Scott Palmer and counsel Ted Van Der Meid.

The Investigative Subcommittee finds that the reports that House pages were generally or as a group warned about Rep. Foley are not supported by the record. None

of the staff associated with the page program or former pages who were interviewed by the Subcommittee recalls any such warning being given.

The Investigative Subcommittee's inquiry was not limited to Rep. Foley and his interaction with current or former House pages. Witnesses were asked to provide any information they had regarding potentially improper conduct involving House pages and any Member, officer or employee of the House. Other than as described below, the Subcommittee received no information that warranted further inquiry regarding any other Member, or any officer or employee of the House.

The Investigative Subcommittee was provided with information concerning certain allegations made regarding Rep. Jim Kolbe and his interaction with former House pages. The Subcommittee was told that those allegations are the subject of a preliminary inquiry by federal law enforcement officials. The Committee Rules include provisions that address the handling of a complaint that alleges a violation of a law or rule that is enforced by law enforcement or regulatory authorities. Committee Rule 15(f) provides that the Committee "may defer action on a complaint against a Member" where either of two circumstances is present –

"when the complaint alleges conduct that the Committee has reason to believe is being reviewed by appropriate law enforcement or regulatory authorities," or

"when the Committee determines that it is appropriate for the conduct alleged in a complaint to be reviewed initially by law enforcement or regulatory authorities."

A 1975 Committee report explained the Committee's approach in the circumstance of an ongoing investigation by law enforcement authorities as follows:

[W]here an allegation involves a possible violation of statutory law, and the committee is assured that the charges are known to and are being expeditiously acted upon by the appropriate authorities, the policy has been to defer action until the judicial proceedings have run their course. This is not to say the committee abandons concern in statutory



matters – rather, it feels it normally should not undertake duplicative investigations pending judicial resolution of such cases.

The Subcommittee concludes that the allegations regarding Rep. Kolbe are within its jurisdiction, because they involve knowledge or information of Members, officers or employees regarding potentially improper conduct involving Members and pages or former pages. The Subcommittee heard some testimony regarding the allegations, but Rep. Kolbe did not provide full and complete testimony regarding the allegations, citing the pending federal inquiry. The Investigative Subcommittee therefore makes no findings and draws no conclusions regarding the allegations.

Rep. Kolbe is retiring from the House at the end of this term, and will no longer be within the Committee's jurisdiction after his retirement. In light of Rep. Kolbe's imminent retirement, as well as the preliminary federal inquiry and the Committee's frequent practice of deferring matters involving parallel criminal investigations or proceedings, the Investigative Subcommittee does not recommend further investigative or disciplinary proceedings by the House against Rep. Kolbe.

## **B. Review of Relevant Standards of Conduct**

Pursuant to House Rule XI, clauses 3(a)(2) and (3)(b)(2), and pursuant to Committee Rules 14(a)(3) and 18, the Committee has the authority to investigate any alleged violation by a Member, officer, or employee of the House, of the Code of Official Conduct or one or more law, rule, regulation, or other standard of conduct applicable to the conduct of a Member, officer, or employee of the House in the performance of his or her duties or the discharge of his or her responsibilities.

The Code of Official Conduct of the House of Representatives is set forth in House Rule 23. The Investigative Subcommittee determined that only Clause 1 of House Rule 23 would be applicable to this matter. House Rule 23, Clause 1 (the "Code of Official Conduct") provides that "[a] Member, Delegate, Resident Commissioner, officer,

or employee of the House shall conduct himself at all times in a manner that shall reflect creditably on the House.” As noted previously by the Committee, this provision (House Rule 23, Clause 1) is the most comprehensive provision of the Code of Official Conduct and was adopted in part so that the Committee, in applying the Code, would retain “the ability to deal with any given act or accumulation of acts which, in the judgment of the committee, are severe enough to reflect discredit on the Congress.”<sup>293</sup> This provision serves “as a safeguard for [ ] the House as a whole.”<sup>294</sup>

The Investigative Subcommittee concluded that the Code of Ethics for Government Service, which is applicable to Members and employees of the House, is also implicated in this matter.<sup>295</sup> In particular, Clause 9 of the Code of Ethics for Government Service provides that “[a]ny person in Government service should . . . [e]xpose corruption wherever discovered.”

Just as in the case of evidence of corruption, the Investigative Subcommittee believes that Members and House officials must act in a responsible manner in any case of any allegation involving House pages. At a minimum, House Members and officials are obligated not to withhold any information from any appropriate governmental or supervisory authority that relates, or even possibly relates, to the education, care, or safety of House pages.

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<sup>293</sup> *House Ethics Manual*, 102d Cong., 2d Sess. (April 1992) at 12 (*quoting* 114 Cong. Rec. 8778 (Apr. 3, 1968); *In the Matter of Representative Earl F. Hilliard*, H. Rep. 107-130, 107<sup>th</sup> Cong., 1<sup>st</sup> Sess. (July 10, 2001) at 12; *In the Matter of Representative E.G. “Bud” Shuster*, H. Rep. 106-979, 106<sup>th</sup> Cong., 2d Sess. (Oct. 16, 2000) at 9.

<sup>294</sup> *Inquiry into the Operation of the Bank of the Sergeant-At-Arms of the House of Representatives*, H. Rep. 102-452, 102d Cong., 2d Sess. (March 10, 1992) at 22 (*citing* H. Rep. 90-1176, 90<sup>th</sup> Cong., 2d Sess. at 17 (1968)).

<sup>295</sup> See *In the Matter of Representative James A. Traficant, Jr.*, H. Rep. 107-594, 107<sup>th</sup> Cong., 2d Sess. Vol. 1 (July 19, 2002) (Violations of the Code of Ethics for Government Service, along with violations of the Code of Official Conduct, formed the basis of a Statement of Alleged Violations adopted by an Investigative Subcommittee against a Member, and that led to the expulsion from the House of that Member.).

### **C. Conclusions Regarding Conduct**

Broadly stated, the conduct reviewed by the Investigative Subcommittee fell into three general categories: Conduct prior to the discovery of the e-mails from Rep. Foley to the former Alexander page in November 2005; the response to the e-mails beginning in November 2005 and continuing into 2006; and conduct surrounding the resignation of Rep. Foley in September 2006. The Investigative Subcommittee's analysis and conclusions are set forth below.

#### *1. Treatment of Foley's Conduct Unrelated to the E-mails*

The evidence establishes that concerns began to arise about Rep. Foley's interactions with pages or other young male staff members shortly after Rep. Foley took office in 1995. Both Kirk Fordham and Jeff Trandahl acknowledged that they had such concerns, and that they raised their concerns with Rep. Foley directly on multiple occasions. These concerns, as explained by these witnesses, were not the result of either knowledge or suspicion that Foley was engaged in improper contact with pages or other young staffers, but were instead based upon the possibility that any close interaction between Foley and pages or other young male staff could create an appearance problem for Foley in light of his status as a closeted homosexual.

The weight of the evidence supports a conclusion that Kirk Fordham talked to Scott Palmer about Fordham's concerns about Rep. Foley's conduct, and that Palmer later talked to Rep. Foley. Similarly, the evidence shows that Jeff Trandahl raised his concerns with Ted Van Der Meid on several occasions, but Van Der Meid testified that those discussions did not conclude with any requests or decisions to take any action.

Absent any evidence that Rep. Foley was engaging in improper contact with pages or other young male employees, the Investigative Subcommittee does not conclude that those employees who were nevertheless concerned that Rep. Foley's conduct presented possible appearance problems acted unreasonably in not taking further action at

that time. In fact, the evidence shows that both Fordham and Trandahl took steps to bring their concerns about Rep. Foley's conduct to the attention of others who they thought might be able to help address their concerns. The Subcommittee similarly finds that, given the nature of the concerns, those who were made aware of such concerns did not act unreasonably in not taking further action at that time.

The incident involving the former Kolbe page and the handling of his communications from Rep. Foley presents a more difficult question. The Investigative Subcommittee deliberated extensively over whether the evidence supports a finding that Rep. Kolbe saw a copy of the sexually graphic instant message allegedly received by his former page, or whether, as Rep. Kolbe testified, he was only told by the former page that Rep. Foley had sent an e-mail or instant message that made the former page "uncomfortable." The Investigative Subcommittee found the former page to be credible and his testimony to be plausible, but given the absence of documentary evidence, the denial by Rep. Kolbe of having seen the communication, and the possibility that the instant message could have been attached to an e-mail sent to Rep. Kolbe but not opened and read, the Investigative Subcommittee cannot definitively conclude whether Rep. Kolbe saw the instant message.

In the end, however, the Investigative Subcommittee did not consider the answer to the question of whether Rep. Kolbe actually saw the instant message sent by Rep. Foley to be dispositive in addressing the conduct of Rep. Kolbe and others in his office. If Rep. Kolbe was not shown the instant message he should have asked for it. He knew that Rep. Foley was gay, knew that the communication made the former page (who by this time was only a college freshman and was less than two years removed from the page program) uncomfortable, and recognized that the communication may have been sexual in nature. He also knew that he was being asked to confront another Member about the Member's conduct on a potentially extremely sensitive issue. In light of those facts, the Investigative Subcommittee believes that Rep. Kolbe should have asked for the instant message (if he did not already have it) in order to make sure that his response was the correct one.

The Investigative Subcommittee does not conclude that Rep. Kolbe's handling of this matter supports a conclusion that Rep. Kolbe violated any House rule or standard of conduct. Although Rep. Kolbe says that he did not see the contents of the message, he did take steps to address the former page's complaint by asking his administrative assistant to contact both Rep. Foley's chief of staff Kirk Fordham and the Clerk. The former page received an apology from Rep. Foley, which indicates that Rep. Foley was told that his communication to the former page had made the former page uncomfortable. The Investigative Subcommittee therefore does not recommend to the full Committee either that the Investigative Subcommittee's jurisdiction be expanded or that another Investigative Subcommittee be established to name Rep. Kolbe or others on his staff as respondents.

## *2. The Handling of the 2005 E-Mails*

The former Alexander page's decision to send the Foley e-mails to his acquaintance on Rep. Alexander's staff in August 2005 triggered a complicated series of events that led eventually to Rep. Foley's resignation over a year later. The Investigative Subcommittee finds that few of the individuals who ultimately came to participate in those events handled their roles in the manner that should be expected given the important and sensitive nature of the issues involved.

*Rep. Alexander's Office.* The Investigative Subcommittee first reviewed the facts surrounding the initial contact with Rep. Alexander's office by its former page, which occurred in late August contemporaneously with the e-mailed request from Rep. Foley for a picture. The junior staff member who received copies of the e-mails is no longer a House employee, and the Investigative Subcommittee therefore did not attempt to reach a conclusion regarding whether her conduct could provide a basis for disciplinary action. While the preferred course of action would have been to bring the e-mails to the attention of her chief of staff or Rep. Alexander rather than sharing them with sources outside the House, it is not possible to presume what Rep. Alexander would have done had he been

notified of the content of e-mails any sooner. Accordingly, the Investigative Subcommittee focused its inquiry on the conduct of Rep. Alexander and his staff following their discovery that the news media had copies of the e-mails.

The Investigative Subcommittee next carefully reviewed the evidence surrounding the November 2005 press inquiry regarding the e-mails, which soon led to the notification to the Speaker's office, referral to the Clerk's office, and the subsequent intervention with Rep. Foley by Jeff Trandahl and Rep. Shimkus. The Investigative Subcommittee was particularly interested in understanding the wishes of the parents of the former Alexander page regarding how the matter was to be handled, because a number of witnesses testified that they had decided against taking certain actions because of the family's desire for privacy, as conveyed by Rep. Alexander's office.

The Investigative Subcommittee finds that the family did wish that the matter be handled in a way that maintained their and their son's privacy, but we also conclude that the family's desire for privacy could have been accommodated while still investigating the matter more aggressively. The family did not provide any instructions or directions not to share the e-mails with appropriate House Members or staff. By the time of the initial press inquiry in November 2005, the former page believed that the e-mails had stopped after the former page had stopped responding to Rep. Foley's messages. Neither the former page nor his parents were seeking to have Rep. Alexander's office or anyone else address the matter, and the only reason the family was faced with a question about how the matter should be handled was because of the press inquiry. Understandably, they did not want to see any publicity regarding their son, but their testimony is clear that they did not impose any conditions on how Rep. Alexander's office should proceed.

The refusal of Rep. Alexander's office to provide copies of the e-mails to the Clerk is not supported by the stated concerns for the family's privacy. Although at least one member of Rep. Alexander's staff had been aware of the e-mails for over two months, Rep. Alexander and his chief of staff learned of the e-mails only because at least one newspaper reporter had them and called both the family of the page and Rep.

Alexander's office. The staff's refusal to give those e-mails to an officer of the House based on concerns for the family's privacy defies logic given that the reporter already had copies of them, and that Rep. Alexander's office gave a copy of one of the former page's e-mails to the reporter.

Rep. Alexander's office took steps to bring the existence of the e-mails to the attention of others in the House in an effort to make sure that Rep. Foley's communications to the former page ceased. They contacted the Speaker's office and were directed to the Clerk. Those steps brought the e-mails to the attention of Rep. Shimkus and Trandahl, who then confronted Rep. Foley in November 2005.

*Office of the Speaker.* The Speaker's Office responded to the request by Rep. Alexander's office by directing the inquiry to the Clerk. The Speaker's office had no defined procedure for addressing matters such as this that were brought to their attention.

The Investigative Subcommittee deliberated over whether the Speaker's counsel Ted Van Der Meid should have undertaken a more active response to the e-mails, including demanding to see their contents and following up as appropriate, and whether his failure to do anything after learning about the e-mails could be a violation of House rules or standards of conduct. The Investigative Subcommittee concludes that Van Der Meid, as the Speaker's liaison with the Clerk, and therefore as the staff person within the Speaker's office with responsibility for page-related issues, showed an inexplicable lack of interest in the e-mails and the resolution of the matter with Rep. Foley, particularly in light of his prior knowledge regarding concerns raised by Jeff Trandahl about Foley's close (albeit not sexual) interaction with pages. Van Der Meid had also heard from Trandahl about the alleged incident involving Rep. Foley being intoxicated outside the page dorm.

Given Van Der Meid's knowledge regarding Foley's past conduct, as well as his role within the Speaker's office, the Subcommittee believes that he should have done more to learn about the e-mails and how they had been handled. The general concerns he

had heard about Rep. Foley had now become more specific and tied to a particular incident. He knew that the matter involved e-mails and a former page, which should have raised a sufficient concern to trigger further inquiry on his part. The new incident involving the e-mails also should have been sufficient to cause Van Der Meid to share what he knew with more senior staff in the Speaker's office, or with the Speaker directly. The Subcommittee concludes, however, that Van Der Meid's conduct does not support a finding that he acted in a way that violated House Rules or standards of conduct.

The Investigative Subcommittee finds that the weight of the evidence supports the conclusion that Speaker Hastert was told, at least in passing, about the e-mails by both Majority Leader Boehner and Rep. Reynolds in spring 2006. Rep. Alexander did not ask either the Majority Leader or Rep. Reynolds to do anything – each decided to mention the matter to the Speaker on his own initiative. Like too many others, neither the Majority Leader nor Rep. Reynolds showed any curiosity regarding why a young former page would have been made uncomfortable by e-mails from Rep. Foley. Neither the Majority Leader nor Rep. Reynolds asked the Speaker to take any action in response to the information each provided to him, and there is no evidence that the Speaker took any action.

The Speaker's reported statement in response to Majority Leader Boehner that the matter "has been taken care of" is some evidence that the Speaker was aware of some concern regarding Rep. Foley's conduct prior to his conversation with the Majority Leader in spring 2006. Although the Speaker testified that he does not recall ever hearing about the e-mails prior to Foley's resignation in late September, he may have been aware of the matter and believed it had been taken care of prior to spring 2006, given the involvement of his office by Ted Van Der Meid, Mike Stokke and Tim Kennedy in November 2005. The Subcommittee notes, however, that each of those witnesses has testified under oath that they did not tell the Speaker or anyone else in the office about their knowledge of the Foley e-mails until after Rep. Foley's resignation on September 29, 2006.



*Clerk Trandahl and Rep. Shimkus.* As discussed above, Clerk Jeff Trandahl had concerns about Rep. Foley's close interaction with pages for almost a decade by the time the e-mails were brought to his attention in November 2005. Trandahl had taken numerous steps to protect the integrity of the page program and to try to define and enforce limits on the interaction between pages and Members, officers, and staff. The Investigative Subcommittee concludes that much of Trandahl's conduct when he heard about the e-mails was reasonable: He took responsibility for confronting Rep. Foley, he brought in Rep. Shimkus, the Chairman of the Page Board, to confront Rep. Foley directly as a fellow Member, and he notified his liaison in the Speaker's Office, Ted Van Der Meid, after the meeting with Foley. He also, according to his testimony, pressed Rep. Alexander's chief of staff for copies of the e-mails, but the staff member reportedly refused to provide copies, citing the wishes of the parents for privacy.

The Investigative Subcommittee attempted unsuccessfully to determine why Trandahl had not sought support from the Speaker's office or the members of the Page Board to obtain a copy of the e-mails. Trandahl testified that he followed a "chain of command" by dealing solely with his liaison, Van Der Meid, in his dealings with the Speaker's office, and Trandahl may not have felt that such support would have been available. The Investigative Subcommittee believes that given the importance of the need to protect the safety and well-being of the pages, in the future the Clerk, as an officer of the House, should not feel constrained by a chain of command or other reporting structure from bringing any such matters directly to the attention of the Speaker.

The Investigative Subcommittee similarly concludes that Rep. Shimkus should have demanded copies of all relevant e-mails or other documents, if not before he confronted Rep. Foley, then after. Although there is conflicting testimony on whether Rep. Shimkus had excerpts or phrases from the e-mail, there is no suggestion by any witness that he had copies of the actual e-mails. The Investigative Subcommittee concludes that confronting a Member in such a matter without having access to all

relevant information was imprudent, but the action did not constitute conduct failing to reflect creditably on the House.

The Investigative Subcommittee also considered whether Rep. Shimkus should have informed others on the Page Board about Rep. Foley's conduct toward the former page. The Page Board is charged by federal statute with ensuring that the page program is managed to provide for the welfare of the pages. As the Page Board Chairman, Rep. Shimkus was the logical person for Trandahl to contact regarding an issue related to a former page. But once made aware of such a concern, Rep. Shimkus also had an obligation to determine whether the issue brought to him by Trandahl was one that should be addressed by the Page Board rather than by him individually. The Investigative Subcommittee was not persuaded by the argument that the Page Board did not have jurisdiction over the matter because it involved a former page rather than a current one. Rep. Foley's e-mails to the former Alexander page began while he was still a page, and the e-mails the former page characterized as "sick" were sent within a month after he left the page program. The Subcommittee finds that at a minimum Rep. Shimkus had an obligation to learn more facts regarding the e-mails before concluding that he should handle the matter himself without informing the other members of the Page Board or seeking their input.

### *3. Rep. Foley's Resignation*

Rep. Foley's resignation and the events that caused it were the focus of substantial attention in the U.S. media in the following days. Understandably, many of those who may have had some knowledge about Rep. Foley's conduct felt the need to make public statements as their roles began to be scrutinized by the press and others. Beginning the evening after the resignation, several Republican Members and staff met in the Capitol for the purpose of discussing what they knew in order to respond to the media. At least one of the Members who was invited to the meeting, Rep. Tom Reynolds, decided not to attend after consulting with his counsel, Randy Evans, who advised him that attending

such a meeting was inadvisable given that there likely would be an Ethics Committee investigation into the matter.

By the next day, however, Evans who was then acting as counsel to Speaker Hastert and others in the Speaker's office, was coordinating the effort to prepare a statement to be issued by the Speaker's office describing the office's knowledge regarding Rep. Foley's conduct. The Investigative Subcommittee understands the need in a political environment to respond quickly to perceived negative press reports. Such a need is particularly acute where, as here, much of the early reporting failed to make the important distinction between the e-mails to the former Alexander page and the sexually graphic instant messages which caused Rep. Foley to resign. As explained above, the Investigative Subcommittee heard no evidence that anyone in the House -- from either party -- was aware of the instant messages before they were published on September 29, and the Investigative Subcommittee does not fault the Speaker's office for attempting to explain that distinction on September 30.

However, in the Investigative Subcommittee's view, the efforts by the Speaker's office to prepare a statement under the direction of counsel could have had the additional effect of inhibiting the Investigative Subcommittee's ability to secure evidence from witnesses without interference resulting from efforts to compare and contrast recollections prior to testimony before the Committee. This effect was compounded by the appearance of Evans and a law partner as counsel for the Speaker, Stokke and Kennedy during their testimony before the Subcommittee.

#### **D. Recommendations**

The Investigative Subcommittee makes the following recommendations:

The current operation of the page program should be reviewed to ensure that its structure and management remain sound. The program was restructured previously after the page scandal in the early 1980's, and a review should be undertaken to determine

whether the changes made at that time remain appropriate and sufficient to protect the safety and well-being of pages in the page program.

The Page Board should meet on a regularly-scheduled basis to ensure that the page program is being managed appropriately and that the Clerk and others who work to administer the program have the necessary resources to address any issues that might arise. Regular meetings would also make it easier for the Clerk and others who are more involved with the day-to-day management of the program to bring any issues they may be aware of to the attention of the Page Board.

Consideration should be given to constituting the Page Board with equal representation from both parties, in order to lessen the potential for political considerations to influence the handling of issues regarding the safety and well-being of pages.

The Clerk, as an Officer of the House, should have a clear ability to bring matters regarding the safety and well-being of the pages directly to the attention of the Speaker as well as the Page Board.

Members and staff should be better educated regarding the management and structure of the page program, so that all Members and staff understand the role of pages in the House and understand the appropriate ways to address any concerns regarding the welfare of pages.

All Members, officers, and employees of the House must pursue specific and non-specific allegations of improper interaction between a Member or House employee and a participant in the House Page Program – even if the allegations are not readily verifiable or involve the sensitive subject of a Member’s personal relationship with a young person. This obligation applies regardless of whether the Member and page are of the same or opposite sex.